Pages 14263–14347

PART II

FEDERAL REGISTER

VOLUME 29 NUMBER 203

Washington, Friday, October 16, 1964

Department of Agriculture

Aqriculture Procurement Regulations

(AGPR)

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 4—Department of Agriculture

ESTABLISHMENT OF AGRICULTURE PROCUREMENT REGULATIONS (AGPR)

Chapter 4 of Title 41 of the Code of Federal Regulations (established January 11, 1962, 27 F.R. 306) is issued to read as set forth below.

Done at Washington, D.C., this 24th day of September 1964.

F. R. MANGHAM,
Director of Plant and Operations.

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AUTHORITY: The provisions of this Part 4–1 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

§ 4–1.000 Scope of part.

This part describes the method by which the Department of Agriculture implements and supplements the Federal Procurement Regulations, and contains procedures which implement and supplement Part 1–1 of the Federal Procurement Regulations (FPR).

Subpart 4–1.1—Introduction

§ 4–1.101 Scope of subpart.

This subpart sets forth introductory information pertaining to the Department of Agriculture Procurement Regulations (AGPR), as follows: Purpose, authority, applicability, exclusions, issuance, arrangement, implementation, and deviation procedure.

§ 4–1.102 Purpose.

This subpart establishes Chapter 4 of the Federal Procurement Regulations System, and describes the relationship to the FPR of said Chapter 4.

§ 4–1.103 Authority.

AGPR are issued under section 161 of the Revised Statutes of the United States (5 U.S.C. 22) and section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486 (c)), or under other authority specifically cited.

§ 4–1.104 Applicability.

§ 4–1.104–1 Of Federal Procurement Regulations.

Procurement by the Department of Agriculture is subject to the FPR (Chapter 1 of this title) except as may be otherwise authorized by law.

§ 4–1.104–2 Of Agriculture Procurement Regulations.

AGPR are prescribed for application to procurement of administrative and operating supplies, equipment, and services, for consumption or use by the Department in carrying out its programs. Certain program functions of the Department are, by reason of special law, exempt from pertinent parts of these regulations; however, they shall be applicable to such functions, insofar as it is feasible, consistent with efficient program operations.

§ 4–1.105 Exclusions.

Certain Departmentwide procurement regulations which come within the scope of this chapter nevertheless may be excluded from AGPR. These exclusions include the following categories:

(a) Subject matter which bears a security classification.

(b) Subject matter which is expected to be effective for a period of less than six months.

(c) Subject matter which is being instituted on an experimental basis for a reasonable period.

§ 4–1.106 Issuance.

§ 4–1.106–1 Internal.

AGPR are published in loose-leaf form for distribution within the Department. Requests to be placed on the distribution list, or for extra copies, should be addressed to the Director of Plant and Operations.

§ 4–1.106–2 Public.

Those parts of AGPR which are deemed necessary for business concerns, and others properly interested, to understand basic and significant Department procurement regulations which implement, supplement, or deviate from the FPR are published (in Title 41) in the FEDERAL REGISTER. Detailed instructions of interest primarily for internal agency guidance are not so published. Subject matter appearing in loose-leaf form but not published in the FEDERAL REGISTER is shown by placing a double line on the right margin of the loose-leaf page, opposite the unpublished subject matter.

§ 4–1.106–3 Code arrangement.

AGPR are issued in the Code of Federal Regulations as Chapter 4 of Title 41, Public Contracts, implementing and supplementing Chapter 1, which constitutes the FPR.

§ 4–1.106–4 Copies.

Copies of AGPR in FEDERAL REGISTER and Code of Federal Regulations form may be purchased by the public, at nominal cost, from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

§ 4–1.107 Arrangement.

§ 4–1.107–1 General plan.

The general plan, numbering system, and nomenclature used in the AGPR conform with FEDERAL REGISTER standards approved for the FPR.

§ 4–1.107–2 Numbering.

The numbering system permits identification of every unit. The first digit, "4", represents the chapter allocated to the Department, followed by a dash. This is followed by the part number (which may be one or more digits) fol-

lowed by a decimal point. The numbers after the decimal point represent, respectively, the subpart, section (in two digits), and, after the dash, subsection, paragraph, subparagraph, and further inferior divisions. For example, this division is called "section 4–1.107–2", in which the first digit denotes the chapter, the second the part, the third the subpart, the fourth and fifth the section, and the sixth the subsection.

§ 4–1.107–3 Citation.

AGPR will be cited in accordance with approved FEDERAL REGISTER standards. Thus, this section, when referred to formally in official documents such as legal briefs should be cited as "41 CFR 4–1.107–3." Any section of AGPR may be informally identified for purposes of brevity, as "AGPR" followed by the section number, such as "AGPR 4–1.107–3."

§ 4–1.108 Agency implementation.

As portions of AGPR material are prescribed, agencies within the Department may publish in the FEDERAL REGISTER implementing regulations deemed necessary, as outlined in § 4–1.106–2 of this chapter. Detailed instructions of interest primarily for internal agency guidance will not be published in the FEDERAL REGISTER. All implementing regulations shall be prepared to conform with FPR style and arrangement, except that the loose-leaf format may be in a single column per page. Regulations or instructions issued by agenices of the Department will be identified by the use of alphabetical suffixes with the chapter number, as follows:

4A Agricultural Marketing Service.
4B Agricultural Research Service.
4C Agricultural Stabilization and Conservation Service.
4D Farmers Home Administration.
4E Federal Extension Service.
4F Foreign Agricultural Service.
4G Forest Service.
4H Rural Electrification Administration.
4I Soil Conservation Service.
4J Office of Management Services.

§ 4–1.109 Deviation.

§ 4–1.109–1 Description.

A description of the term "deviation" appears at § 1–1.009–1.

§ 4–1.109–2 Procedure.

Deviations from the FPR and AGPR shall be kept to a minimum and controlled as follows:

(a) Deviations in both individual cases and classes of cases must be approved in advance by the Director of Plant and Operations. Requests for approval of such deviations may be initiated by the heads of Department agencies and the heads of their procuring activities, as defined in § 1–1.206. They shall be submitted to the Office of Plant and Operations. The requests shall cite the specific part of the FPR or AGPR from which it is desired to deviate, shall set forth the nature of the deviations, and shall give the reasons for the action requested.

(b) If a requested deviation is considered appropriate, approval will be accomplished as follows:

(1) Where the deviation applies to an individual case, approval will be granted by memorandum addressed to the requesting officer with copies to interested offices. The contract file of the requesting office shall include a copy of the request and approval.

(2) Where the deviation applies to a class of cases, necessary coordination with the General Services Administration will be accomplished by the Office of Plant and Operations. The deviation may be issued as a part of AGPR, or the agency concerned may be authorized to issue internal instructions which incorporate the deviation.

(c) The requesting office will be notified by memorandum, with copies to other interested offices, whenever a requested deviation is disapproved.

(d) In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

(e) Requests for deviations may be made at any time. New FPR issuances should be reviewed upon receipt, so that requests for deviations can be acted upon prior to the effective date, whenever practicable.

§ 4–1.110 Relationship of AGPR to the FPR.

(a) AGPR Chapter 4 implements and supplements the FPR and is part of the Federal Procurement Regulations system. Material published in the FPR having Government-wide applicability becomes effective throughout the Department of Agriculture upon the effective date of the particular FPR material. Such material generally will not be repeated, paraphrased, or otherwise restated in Chapter 4.

(b) Implementing material is that which expands upon related FPR material. Supplementing material is that for which there is no counterpart in the FPR.

(c) Material in Chapter 4 may deviate from the FPR when a deviation (see § 4–1.109) is authorized and is explicitly referenced to the FPR. Where Chapter 4 contains no material implementing the FPR, the FPR alone will govern.

§ 4–1.111 Administrative Regulations.

(a) *General.* The Administrative Regulations of the Department contain the continuing policies, authorities and operating regulations issued by the Secretary of Agriculture and administrative staff officers having general application to the agencies or employees of the Department.

(b) *Arrangement.* The complete Administrative Regulations consist of the following Titles:

Title 1—General Authorities and Functions.
Title 2—National Agricultural Library.
Title 3—Information.
Title 4—Plant and Operations.
Title 5—Procurement.
Title 6—Budget.
Title 7—Accounting.

(c) *References.* Each Title is further subdivided, basically, into chapters, sections, and paragraphs. Editorial references to the Administrative Regulations in this Chapter 4 are made to the title: e.g., "Title 1 of the Administrative Regulations", or "1 AR". Reference to specific text is to paragraphs: e.g., "1 AR 252" or "5 AR 622".

(d) *Availability.* Complete sets of AR are usually available at regional and state offices of Department agencies, and are available to the public for inspection, subject to the provisions of Title 7, Code of Federal Regulations, Part 1, Subpart A, §§ 1.1 to 1.6 (1 AR 534–538).

Subpart 4–1.3—General Policies

§ 4–1.302 Procurement sources.

§ 4–1.302–1 General.

It is the policy to assure that supplies and services procured by the Department are restricted to those minimum requirements in terms of economy and efficiency that are adequate to meet the needs of the using programs.

§ 4–1.305 Specifications.

§ 4–1.305–3 Deviations from Federal specifications.

Agencies shall designate competent officials to authorize required deviations from Federal specifications. Such deviations shall be supported by written justifications therefor, copies of which shall be furnished promptly to the Director of Plant and Operations who shall notify the General Services Administration in accordance with applicable regulations.

§ 4–1.305–50 Agency specifications.

(a) *Definition.* A specification prepared by an agency of the Department to meet recurring needs of the agency involved for specialized supplies, equipment, or services peculiar to its needs, and for use by other agencies of the Department as need therefor arises.

(b) *Responsibility.* Agencies of the Department will be responsible for the development and maintenance of agency specifications which fall within their respective areas of operation. The Office of Plant and Operations will be responsible for coordinating the development and use of such specifications in the Department.

(c) *Development.* As the need arises in an agency for a standard agency specification, it will be developed by the agency involved along the same general lines outlined in § 4–1.307 for the development of specifications for attachment to invitations for bids. If technical or other problems arise that require the assistance of a specialist in a particular field not available in the agency, request for such assistance should be made to the Office of Plant and Operations. A copy of each new agency specification developed shall be forwarded to the Office of Plant and Operations.

(d) *Maintenance of list of agency specifications.* The Office of Plant and Operations will maintain a list of all agency specifications. The list will be distributed in the Department periodically, and will show origin of the specification and where copies may be obtained.

§ 4–1.305–51 Index to Federal Specifications and Standards.

The "Index of Federal Specifications and Standards" is issued annually, with monthly cumulative supplements. This index contains general information on the use and ordering of Federal Specifications and Standards, and other available Governmental specifications, including Emergency Federal Specifications, GSA Specifications, and Departmental Specifications (issued by various Federal Agencies) which, as a rule, have general application and scope and may be also used by all agencies.

§ 4–1.305–52 Availability of copies of specifications and standards.

When Federal Specifications and Standards are used, copies should be on file in the office issuing the invitation, so that they may be examined by interested bidders. Prospective bidders should be advised in the invitation that copies of Federal Specifications and Standards may be purchased at a nominal cost from the Business Service Centers of the General Services Administration Regional Offices. Department users will obtain annual requirements of specifications and standards (including Federal, Emergency Federal, Interim Federal, and GSA) and index (including supplements thereto) from the Central Supply Section, Office of Plant and Operations, which will obtain a sufficient supply from GSA to meet the needs of the agencies both in Washington, D.C., and in the field, and will distribute them on a reimbursable basis to agency headquarters in Washington in accordance with a mailing list which it maintains for that purpose. Other requirements may be obtained from the Federal Supply Service, Region 3, GSA, 7th and D Streets SW., Washington, D.C. by purchase order. These other requirements will be furnished without charge unless they are substantial in quantity, in which event GSA may require reimbursement.

§ 4–1.306 Standards.

§ 4–1.306–1 Mandatory use and application of Federal Standards.

If deviation from or modification of a Federal Standard is required, application, giving reason therefor, should be made through appropriate agency channels to the Office of Plant and Operations for transmittal to the Federal Supply Service, Standards Division of GSA. The use of Interim Federal Standards is optional. Federal Standards do not preclude the use of existing Government stocks or excess property not in full conformity with such standards.

§ 4–1.307 Purchase descriptions.

§ 4–1.307–2 General requirements.

(a) *Basic requirements.* Bid specifications must be so drawn as to set forth the actual minimum needs of the Government clearly, fairly, and accurately, and in such terms as will (1) permit full and free competition by all qualified bidders, (2) restrict the use of appropriations to the acquisition of actual minimum needs, (3) secure such needs at the lowest cost, and (4) guard against injustice, favoritism, collusion, graft, etc., in transacting the public business. The following principles of specification writing should be observed in order to assure that these basic requirements of a specification are met. (See 13 Comp. Gen. 284 and B–117773 of May 27, 1954.)

(b) *Language.* Specification language should be positive using simple words and short sentences. Technical words or phrases should be avoided except when necessary and recognized in the trade as having a definite meaning and are so used. Trade terms must be used in their common or local meaning. Use the same word throughout; never synonyms. Restrict abbreviations to those in common use, and not subject to misunderstanding. A normally abbreviated term should be spelled out when first used in the text but may be later abbreviated if clear.

(c) *Arrangement.* The extent of detailed description necessary adequately to specify various types of supplies or services may vary widely and will therefore affect the arrangement of the specification. Brief descriptions may be adequately stated in one paragraph, whereas more detailed descriptions will usually require a longer, more formally arranged, specification. As a general guide, the following arrangement of the subject matter of specifications will be followed, the subject matter of each paragraph to be included as applicable and as described in the following subparagraphs:

(1) Service requirements.
(2) Technical or performance details.
(3) Inspection and testing provisions.
(4) Packaging, packing, marking, and shipping provisions.
(5) Basis of payment.

(d) *Service requirements.* This is a statement in the nature of a preamble to the specification, stating its intent, the reasons for its specific minimum requirements, and such further information as will assist in assuring a complete understanding of the type of supply or service desired. The service requirements would include, when appropriate, information regarding the climate, altitude, topography, or location, availability of adequate repair facilities, exposure to physical or chemical influences, and other conditions that are significant to performance. There should be stated in the service requirement the reasons for any restrictive provisions in the specification, so that there may be a mutual understanding of what is required and why.

(e) *Technical details.* When it is impractical to rely on a statement of how the specified item shall perform, complete details of how it shall be constructed or constituted shall be provided. Particular care must be taken in drafting technical details of the specification to show the essential minimum elements of design or formulation, degrees of tolerance allowable, and such other technical factors as will be required by the bidder to understand exactly what is the minimum required. Indefinite terms such as "best commercial quality", "well manufactured", etc., are not to be used. When a product is specified which is regularly distributed in commercial channels, any specification requirement of a particular quality or grade of a restrictive nature should be noted for the bidder's attention as well as being justified in the "Service Requirements". Federal Standards must be adhered to and Commercial Standards should be followed wherever practicable. (See §§ 1–1.306–1 and 4–1.306–1.)

(f) *Performance details.* Whenever practical, and in lieu of stating the "Technical Details", a specification should state what the item is expected to do. Performance details should include when appropriate such items as output, in terms of available power, velocity, production per minute, area of coverage, depth of penetration, etc.; capacity in terms of total load, cubic content, etc.; dimensional limitations; hardness; maneuverability; degree of tolerance or accuracy; weight limitations; resistance to external physical and chemical influences; and any other properties or qualities that have to do with how the item shall perform. Particular care must be used in writing performance details to avoid conflicts; for instance, if the speed or capacity of a machine is stated, the horsepower of the power unit required would not be specified but rather it would be stated that the power unit is to have sufficient capacity to operate the machine at stated speeds under stated loads. Whenever performance details are specified, there must be separately stated the type of inspection or test that will be used to determine if the item furnished meets the performance requirements of the specification. For specifications that do not require extensive performance details, it is sometimes desirable to combine such requirements with the "Service Requirements" in the interest of readability.

(g) *Inspection and testing provisions.* The method to be used to determine if items furnished meet contract specifications should be stated in the specification. This is particularly necessary when service requirements and performance details are relied upon in the specification to describe the Government's needs. Although not a part of the specification itself, advance arrangements should be made for adequate inspection and testing in accordance with Parts 1–14 and 4–14 of this title.

(h) *Packaging, packing, marking and shipping provisions.* Commercial practices should be followed wherever practicable in such provisions. Any special requirements should be specifically noted for the bidder's attention. Provisions should be made for special instructions and warning notices on package and shipping containers if toxic, flammable, explosive, or other materials dangerous to personnel or property are involved.

(i) *Basis of payment.* If the specification contemplates elements of a service nature, or deliveries extending over a considerable period of time, it should clearly state the basis on which payment will be made for the services performed or deliveries made and accepted. Provision should be made in such cases for a sufficient retention during the contract of payments due (normally 10 percent) to protect the Government in the event of failure of the contractor to satisfy fully the contract requirements.

(j) *Materials furnished contractor by Government.* The specification should clearly identify any materials to be furnished by the Government for fabrication or use by the contractor, with a stipulation therein that title remains in the Government and all such property not consumed in the performance of the contract will be returned upon contract completion. Ordinarily, no bond or insurance coverage is required. However, when the value of the material is substantial and it is known that the contractor's financial position is not adequate to cover potential loss or damage, a requirement for insurance may be incorporated in the specification. In either case, the contract shall contain an appropriate provision to fix financial responsibility of the contractor for any loss or damage to the Government furnished property.

(k) *Guarantee.* When performance details are stated in a specification, there may be a need for assurance that an item will be received that will perform satisfactorily, often for several years, especially if there is no practical way in which to perform a test that will make such a determination in advance of awarding the contract or accepting the item. In such cases, it is desirable to call for a guarantee, and the conditions thereof must be stated. If performance details are used, a guarantee should be stipulated, as a requirement of the bid, guaranteeing the item to meet the performance requirements of the specifications for a reasonable period of time. When technical details are stated, any guarantee would be of limited value. In any case the guarantee must be reasonable enough so as not to unnecessarily limit competition. The general rule may be stated as follows:

The more general the specifications, the greater the degree of responsibility which the contractor may legally be required to accept, viz., as the technical details are defined by the specifications, the contractor's responsibility for performance must of necessity decrease.

(l) *Basis for evaluation.* The basis that will be used in evaluating bids should be as clear, precise and exact as possible and must be stated in the Invitation For Bids. It should be stated as a mathematical equation if possible. Where this cannot be done it must be stated with sufficient clarity and exactness to inform each bidder, prior to bid opening, of the factors which will be used in evaluating his bid in relationship to other bids, so that he may estimate within reasonable limits the effect of the application of such evaluation. Factors such as, but not limited to, weighted values to be applied at time of award, award in the aggregate, estimated quantities, delivery time when the need is urgent, with liquidated damages in case of delay, and any other circumstance which may cause the award to be made in an unusual manner, must be set forth in the invitation for bids. (See 36 Comp. Gen. 380, 10 Comp. Gen. 261, 15 Comp. Gen. 626.)

§ 4–1.307–3 Commercial, and state and local government specifications and standards.

(a) *Underwriters approvals (labels), etc.* Specifications may include a requirement that articles shall conform to standards adopted by a recognized independent laboratory or testing organization in the absence of a Government-prescribed standard or specification, but the absence of a certificate, label or approval from such organization will not automatically exclude otherwise acceptable products. (See 33 Comp. Gen. 573.) A mandatory specification requirement that such a certificate, label or approval be furnished is authorized only when it can be definitely established that such standards are generally recognized and accepted in the industries involved and the inclusion of such a requirement would not prevent any manufacturer from bidding on the article specified. If this cannot be done but it is desirable to accept such labels, etc., as evidence of conformity with certain of the specification requirements, the following specification wording is suggested:

The bidder shall submit proof that the material or appliance he proposes to supply under this specification conforms to the standards of the [Underwriters' Laboratories, Inc., as regards fire and casualty hazards]. The label of the [Underwriters' Laboratories] will be accepted as conforming with this requirement. In lieu of the label, the bidder may submit independent proof satisfactory to the purchasing agency that his material or appliance conforms to the published standards, including methods of test, of the [Underwriters' Laboratories].

The bracketed wording would need to be changed to state the particular standards organization whose approval is desired.

(b) *Simplified practice recommendations and commercial standards—(1) Purpose.* Simplified Practice Recommendations and Commercial Standards originate with an interested industry group. They are cooperatively developed with the National Bureau of Standards, U.S. Department of Commerce, and issued by that agency as a part of a broad program of assisting American industries through the Government's cooperation and service, rather than through regulations and control. The primary purposes are to bring together producers, distributors, and users, and to assist in establishing recommendations and standards they approve.

(2) *Definitions—(i) Simplified practice recommendation.* A recorded voluntary recommendation of the trade of a list of sizes, varieties, types, or grades of products developed through cooperative action of producers, distributors, and consumers as coordinated and published by the Commodity Standards Division of the Department of Commerce, the purpose of which is to designate certain such sizes, varieties, and types and grades of products as being approved for regular stock purposes, after superfluous variety has been eliminated as stock items.

(ii) *Commercial standard.* A recorded voluntary standard of the trade, developed through cooperative action of producers, distributors, testing laboratories and consumers as coordinated and published by the Commodity Standards Division of the Department of Commerce. The term includes terminology, types, classification, grades, sizes, methods of test, and use characteristics of manufactured products as a basis for a clear understanding between buyers and sellers.

(3) *Use of recommendations and standards.* The program for the de-

velopment of Simplified Practices Recommendations and Commercial Standards is voluntary in nature, and no legal obligation arises as a result of execution of an acceptance form relating thereto. However, they may be referred to for the purpose of ascertaining whether a product specifically warranted, described, or referred to as conforming to a description or standard contained in a Simplified Practices Recommendation or Commercial Standard conforms in fact to such description or standard. In the case of Commercial Standards, a firm may depart from the standard if it so desires, but only those articles which actually comply with the standard in all respects can be identified or labeled as conforming thereto. Firms who have accepted Simplified Practices Recommendations have agreed to utilize them as far as practicable and, while they, too, may be departed from, any offer or bid to furnish in accordance therewith will be considered on that basis.

(4) *Availability of copies.* Copies of proposed Simplified Practices Recommendations and Commercial Standards, on which comments are invited, are distributed in the Department by the Office of Plant and Operations, Procurement and Contract Management Division. Copies of the resulting recommendations and standards may be obtained from the Commodity Standards Division, Department of Commerce, Washington, D.C., through entry on that Division's mailing list to receive all issues, or upon specific request for individual copies.

§ 4–1.310 Responsible Prospective Contractor.

§ 4–1.310–5 Standards.

Loyalty consideration: The Department will not knowingly award a contract to anyone who advocates the overthrow of the Government of the United States by force or violence. Where it is proposed to refuse award on this basis, the case shall be referred to the Chief, Procurement and Contract Management Division, for final determination. (See also § 4–4.5093.)

§ 4–1.315 Use of liquidated damages provision in procurement contracts.

§ 4–1.315–2 Policy.

(a) The rate of liquidated damages will depend on the nature of the service or commodity involved and the circumstances of a particular case. For such items as small supplies and equipment, an amount equal to a specified percentage of the unit price per calendar day for the undelivered portion should be used. (Ordinarily, 1 percent might be satisfactory; however, the actual amount will depend on the administrative decision for the particular case.) Contracts for large, expensive equipment may specify a definite amount per calendar day in lieu of the percentage figure.

(b) If delievery of the supplies contracted for will reduce the damages to the Government in proportion to deliveries made, the contract stipulation regarding liquidated damages should be on the basis that damages will be assessed on any undelivered supplies for each calendar day of delay after the delivery date fixed in the contract.

(c) Sample clauses pertaining to liquidated damages are shown in § 4–1.315–3.

§ 4–1.315–3 Contract provisions.

To make the provisions stated in § 1–1.315–3 operative, the following are examples of clauses that may be used in the invitation for bids:

After award is made to a bidder, if he fails to make delivery within the time specified by him, there will be deducted from payment to him, as a liquidated damage, not as a penalty, an amount equal to ...% of the bid price of the undelivered portion of the order for each calendar day of delay, including Sundays and holidays. Delivery time will be reckoned in terms of calendar days after the date of receipt by the bidder of purchase order and shipping instructions or other formal notice to proceed. The calendar day is the smallest unit of time that will be considered.

or

After award is made to a bidder, if he fails to make delivery within the time specified by him, there will be deducted from payment to him as a liquidated damage, not as a penalty, $_____ per undelivered unit complete as per specifications for each calendar day of delay, including Sundays and holidays. Delivery time will be reckoned in terms of calendar days after the date of receipt by the bidder of purchase order and shipping instructions or other formal notice to proceed. The calendar day is the smallest unit of time that will be considered.

§ 4–1.316 Time of delivery or performance.

§ 4–1.316–2 General.

(a) The invitation for bids should not stipulate a required delivery time, except in unusual cases where time of delivery is unusually important. When items desired are of regular manufacture, or regularly carried in stock, and quantity is such that bidders should be able to supply promptly, there is ordinarily no need to specify any particular time for delivery. The bidder must be requested to state his proposed delivery time in the invitation form.

(b) In some instances early delivery may be desirable but not essential. In cases of this nature there is no objection to including a provision in the invitation for bids to the effect that early delivery is desired. When an expression of desire as to early delivery is included in the invitation for bids, delivery time is not a determining factor and the low bidder as to price, meeting the specifications, must receive the award unless the delivery time stipulated is so lengthy as to be considered unreasonable.

(c) The factors which require a specific delivery time usually arise from program requirements, such as construction, forest protection, insect and disease control, establishing of offices, seasonal and emergency needs, etc. In those instances where delivery of materials and supplies must be coordinated with program requirements, in terms of specific periods of time, such delivery should be stipulated in the invitation for bids.

(1) If a definite delivery time is stipulated in the invitation for bids, delivery then becomes a determining factor in awarding the contract and award may be made only to the low bidder meeting the specified delivery time. Where price and other factors in relation to delivery time are to be considered in determining the award, the basis for so evaluating bids must be stated in the invitation in order that the bidder will know how price and delivery are to be equated, i.e., so that the bidder can determine whether to sacrifice price for delivery schedule, minimize price regardless of delivery time, or reach a compromise between the two. Stated another way, the contracting officer must not be in the position of evaluating bids on a basis of which he alone is aware. Accordingly, the following delivery and award provision should be generally used:

Delivery is urgently needed within ------ calendar days after date of receipt by the contractor of notice of award of contract. Award will be determined by placing a delivery evaluation of _____

_____

(show here the percentage or dollar value) per unit per calendar day in excess of the delivery time specified herein and that bid will be accepted which is determined to be in the best interest of the Government under such evaluation.

(2) It is expected that program requirements will sometimes require delivery by a specified date and if no offers are received meeting the specified time, it would necessitate adjusting program schedules and plans to whatever price and delivery could be obtained, and the relative value of either price or delivery as a factor in adjusting program operations may be impossible to predetermine. In such cases, the following provision may be used:

Delivery is urgently needed within ------ calendar days after date of receipt by bidder of notice of award of contract. Bidders are required to state in the space provided therefor in the schedule a definite period of time within which delivery will be made, and the Government will not consider any bid which does not meet the required delivery time unless no bid is received meeting the time limit, in which event it will be necessary to adjust program operations on the basis of offers received, and under such circumstances the Government reserves the right to make award as will best meet its requirements, delivery time and price considered.

(3) When delivery time is stated in the invitation for bids, it should be expressed in terms of calendar days and not by a specific date since any delay in award would affect the stipulated delivery date and might make it impossible to award the contract on its advertised terms. (See Comp. Gen. Decisions B–129005 and B–126327, August 29, 1956, and B–128405, September 17, 1956.) However, dates may be specified as indicated by § 1–1.316–4(b).

(d) Frequently, a portion of the materials or equipment is needed at an early date, the remainder later. It will often be more advantageous to solicit separate bids on the two lots, enabling early delivery on the part needed quickly, and possibly the obtaining of a better price on the remainder when more time allows wider competition. Determination as to whether one or two advertisements should be solicited should rest primarily with the degree of urgency of the initial delivery and its effect on free competi-

tion. When a single invitation for bids is issued, it is usually advisable to list the early and deferred deliveries as separate items to be awarded separately, and in addition, an alternate item allowing bids on the "all or none" basis.

§ 4–1.350 Procurement authorities and responsibilities.

§ 4–350–1 Purpose.

The purpose of this section is to state responsibilities and authorities governing the procurement of equipment, materials, supplies, construction, and services for use or consumption by the Department in carrying on its programs.

§ 4–1.350–2 Responsibility of the Director of Plant and Operations.

Under the provisions of 1 AR 252, the Director of Plant and Operations is responsible for the general management and coordination of procurement activities of the several agencies of the Department. This broad grant of responsibility shall be construed to include the authority (a) to establish such procurement systems and policies, and (b) to delegate such contracting authorities as in the opinion of the Director of Plant and Operations will facilitate the orderly and economical procurement of equipment, materials, supplies, construction, and services for use or consumption by the Department in carrying on its programs.

§ 4–1.350–3 Responsibilities of contracting officers.

(a) Contracting officers are primarily responsible for the development, execution, and administration of contracts and the legal, technical, and administrative sufficiency thereof. Specifically, contracting officers shall be responsible for:

(1) Developing and applying knowledge of the products and services to be contracted for, including determinations of minimum specification requirements, market availability, purchase timing, and other elements of planning the contract action;

(2) Preparing and distributing the invitation for bids;

(3) Receiving and analyzing bids;

(4) Making awards within the limitation of their contracting authority and in accordance with applicable law and regulation;

(5) Making any required determinations in connection with award and administration of contracts except where authority therefor is specifically reserved to other officials;

(6) Performing or having performed any legal or administrative actions necessary to assure satisfactory performance of the contract such as inspection, follow-up on performance, execution of contract modifications, and making decisions on questions of fact. The responsibility for deciding questions of fact may not be delegated.

(b) The policies and procedures of this Chapter 4 are designed to assist contracting officers in carrying out these responsibilities. In the application thereof, contracting officers must exercise reasonable care, skill, and judgment so as to safeguard the interests of the Government in all contractual relationships.

§ 4–1.350–4 Procurement contracting authority.

(a) *Definition.* Procurement contracting authority is the authorization to solicit and accept bids and sign procurement contracts and agreements. This includes authority to sign procurement contracts in which the solicitation of bids may not be required by law or regulation, and to do all things necessary to carry into effect and to conclusion such contracts and agreements.

(b) *Delegations by agency heads.* Procurement contracting authority in any amount shown to be needed shall be obtained by heads of agencies of the Department from the Director of Plant and Operations, and, with the concurrence of the Director of Plant and Operations, such authority may be delegated, without redelegation powers to (1) the incumbent of any responsible position at the agency headquarters, regional office, or field station where the volume of procurement contracting requires the employment of personnel specifically qualified to do such work, or (2) any responsible employee of the agency who is qualified to perform such work.

(c) *Delegation to positions.* When practictable, delegations of authority should be made to incumbents of positions rather than to individuals. This will eliminate the necessity of making a new delegation each time the incumbent of a position is changed.

(d) *Compliance with laws and regulations.* Procurement contracting shall conform with all laws and regulations applicable to the Department, with the policies and procedures set forth in AGPR, and with any applicable policies and procedures otherwise announced or prescribed by the Director of Plant and Operations or other responsible official. A continuing review of operations hereunder will be made by the Office of Plant and Operations.

(e) *Requests for concurrence.* See specimen letter at § 4–16.852 which may be followed in requesting concurrence of the Director of Plant and Operations in the delegation of procurement contracting authorities. The request should be signed by the agency head and submitted in duplicate. A copy of the approved request will be returned with any necessary instructions or modifications. Changes in existing delegations will be handled in the same manner. Procurement contracting authority will not include authority to contract for construction, alteration, or repair of public buildings or works unless specifically requested.

(f) *Requests for special contracting authority.* Expect in an emergency, a request for special contracting authority for a specific contract shall be submitted to the Director of Plant and Operations prior to the issuance of the invitation for bids or request for proposals where there is reasonable expectation that the amount of the ensuing contract will exceed the authority of the issuing officer.

(g) *Contract awards by the Office of Plant and Operations.* In order to accommodate agencies having need therefor, the Procurement and Contract Management Division will, on agency request, solicit bids and/or award contracts when (1) the agency has no delegated procurement contracting authority, (2) the contemplated contract is in excess of the amount of contracting authority delegated to the agency, or (3) the contract is otherwise beyond the authority of the agency. (See § 4–5.5073 for such contract procedure.)

§ 4–1.350–5 Purchasing authority.

(a) *Definition.* "Purchasing authority" is an authority in which the designated officer is authorized to issue purchase orders or requisitions which do not involve the solicitation and acceptance of bids or signing of agreements or contracts. (This should not be construed as precluding the signing of informal agreements which may be required in connection with negotiated purchases.)

(b) *Delegation policy.* The decentralization of the procurement function facilitates the prosecution of agency programs. Delegations of authority are granted to aid effective operations by providing for any necessary purchasing authorities as closely as practicable to the points at which the services are needed.

(c) *Delegation to agency heads.* Heads of agencies of the Department may delegate purchasing authority under such limitations and instructions as they may prescribe, to competent employees and incumbents of responsible positions in Washington and in the field.

(d) *Limitations.* These delegated authorities are subject to laws, regulations, and instructions applicable to, or issued by, the Department and to a continuing review by the Office of Plant and Operations.

§ 4–1.350–6 Personal interest in contracts.

No officer or employee of the Department who is in a position either to influence the award of a contract with the Department or to cause purchase of supplies to be made for the Department, shall be interested in any firm, company, or corporation doing business with the Department unless such interest shall be disclosed in writing and approved by the agency head in advance of the award of any contracts by such officer or employee.

Subpart 4–1.6—Debarred, Suspended, and Ineligible Bidders

§ 4–1.600 Scope of subpart.

This subpart implements and supplements § 1–1.600. It prescribes policies and procedures relating to the debarment, ineligibility, or suspension of bidders for any cause. It is applicable to all procurement and sales contracting by the Department except contracting by the Commodity Credit Corporation. Regulations applicable to that Corporation are stated at 29 F.R. 10495 (7 CFR Part 1407).

§ 4–1.601 General.

§ 4–1.601–1 Definitions.

(a) The "Debarring Officer" is the agency or department official authorized to invoke debarment or suspension measures as authorized by this subpart. The Director of Plant and Operations and the Assistant Director for Procurement and Property Management, Office of Plant and Operations, are the Debarring Officers for the Department (Department Debarring Officers) in connection with all procurement and sales transactions except that for the following activities:

(1) Timber sales pursuant to 16 U.S.C. 476;

(2) School Lunch and Surplus Removal pursuant to 42 U.S.C. 1755 and 7 U.S.C. 612c.

(b) Debarring officers shall be appointed by the appropriate agency head.

(c) Debarring officers are authorized to invoke debarment or suspension measures in accordance with the procedures of this subpart except as authorities may be specifically reserved to the Department Debarring Officer.

§ 4–1.602 Establishment and maintenance of a list of firms or individuals debarred, suspended or ineligible.

The Office of Plant and Operations maintains a consolidated list of firms and individuals debarred or suspended on the bases stated in § 1–1.602–1 to whom contracts will not be awarded and from whom bids will not be solicited. The list and all correspondence relating thereto are for administrative use only and are not to be disclosed to the public. (See 1 AR 536; 7 CFR 1.4(a).) The list is made available to all contracting officers through the issuance of Plant and Operations Memorandum No. 24, and supplements thereto. The list shows the authority for and terms of the debarment or suspension.

§ 4–1.602–1 Bases for entry on the debarred, suspended, and ineligible list.

Entry shall be made on the list on the basis stated in § 1–1.602–1 and as follows:

(a) Those the Debarring Officer determines to debar administratively for any of the causes and under all the appropriate conditions listed in § 1–1.604.

(b) Those the Debarring Officer determines to suspend administratively for the reasons, and under the conditions set forth in § 1–1.605.

(c) Those determined in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provision required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work. Debarment is required only where there is some degree of culpability on the part of the contractor, and not in cases of bona fide misunderstanding or inadvertence. Any violation must, however, be reported to the Department Debarring Officer.

§ 4–1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

Administration of current contracts in all phases may be continued, and payment of funds due may be made, notwithstanding the listing of a contractor, unless otherwise directed by the Debarring Officer.

§ 4–1.604 Causes and conditions applicable to determination of debarment by an executive agency.

The Debarring Officer is the authorized representative of the Agency Head for determinations required by § 1–1.604.

§ 4–1.604–1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* The firm or individual and its known affiliates concerned shall be furnished with a written notice of the proposed debarment stating as a minimum:

(1) That it is proposed to debar the firm or individual,

(2) The scope thereof as to affiliates,

(3) The reasons for the proposed debarment,

(4) The period of the proposed debarment,

(5) That the debarment shall be effective throughout the Department,

(6) Whether the debarment shall extend to all procurement and sales contracts,

(7) That the debarment determination shall become final and effective 30 days after receipt of this notice, unless the firm or individual mails or otherwise furnishes to the Debarring Officer a written request for further consideration in his behalf and within a reasonable time thereafter (60 days, unless the Debarring Officer grants a further period of time) furnishes such information as he wishes considered in his behalf,

(8) Whether or not the firm or individual is temporarily suspended pending final debarment determination.

Where a timely request for further consideration has been received, the firm or individual and its known affiliates concerned shall be notified in writing of the decision of the Debarring Officer on the proposed debarment. If the decision provides for debarment, it shall set forth the period, scope, and effective date thereof and of the right to appeal. In the event of appeal, debarment shall be deferred pending the decision of the Board of Contract Appeals. However, the firm or individual may be temporarily suspended pending final debarment determination. A copy of each debarment notice and each suspension notice shall be provided the Department Debarring Officer.

(b) *Hearings.* Hearings proceedings shall be conducted in accordance with the rules and regulations for disputes and appeals, including the establishment of a Board of Contract Appeals to hear and decide the appeal, stated at Subpart 4–50.2.

(c) *Appeals.* Appeals may be taken from decisions of Debarring Officers within 30 days after receipt by the firm or individual of a decision to debar. The notice of appeal shall be in writing but need not follow any prescribed form. It should indicate the debarment decision from which the appeal is being taken and the date thereof. The notice of appeal should state whether the contractor or bidder desires to appear or be represented at a hearing before the Board of Contract Appeals. Upon receipt of the notice of appeal, the officer receiving such notice shall endorse the date of its receipt thereon and forward it immediately to the Director of Plant and Operations for arranging a hearing.

§ 4–1.605 Suspension of bidders.

§ 4–1.605–1 Causes and conditions under which executive agencies may suspend contractors.

(a) The Debarring Officer may suspend a firm or individual:

(1) Under causes and conditions stated in § 1–1.605–1;

(2) When there is pending a final decision on a debarment determination after notice of debarment, or proposed debarment, has been sent the firm or individual; or

(3) For other cause of such serious and compelling nature, affecting responsibility as a Government contractor, as may be determined by the Debarring Officer to justify suspension.

(b) Suspension of a firm or individual by any Debarring Officer shall operate to suspend such firm or individual throughout the Department.

§ 4–1.605–2 Period and scope of suspension.

(a) *Period of suspension.* Suspensions for other than causes and conditions set forth in § 1–1.605–1(a)(1) shall not exceed 90 days unless

(1) notice of debarment, or proposed debarment, has been given, or

(2) the Department Debarring Officer approves a longer period, provided, however, that in no event shall such suspensions exceed one year.

Such suspensions shall be for 90-day periods, and additional periods of 90-day suspensions shall be preceded by notice thereof to the firm or individual.

§ 4–1.605–4 Notice of suspension.

(a) The firm or individual concerned shall be furnished a written notice by the Debarring Officer of the suspension within 10 days after the effective date of the suspension. The notice of the suspension shall state:

(1) That the suspension is based on:

(i) Reasons stated in the notice of debarment, or proposed debarment, from which there is an appeal or request for further consideration pending, or

(ii) On information that the firm or individual has committed irregularities

of a serious nature in business dealings with the Government or that the suspension is based on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government together with a description of the nature of those irregularities, in general terms, without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) That bids and proposals will not be solicited from the firm or individual and if received will not be considered, and awards of contracts may not be made unless it is determined to be in the best interest of the Government by the Debarring Officer; and

(4) That the suspension is effective throughout the Department.

(b) All inquiries concerning suspended contractors shall be referred to the Debarring Officer concerned for appropriate action. Where a matter has been referred to the Department of Justice, the Department shall not give further information to the contractor or his representative concerning the reasons for suspension beyond that stated in the notice of suspension until the Department of Justice has been advised of the inquiry and acquiesces in any such disclosure.

§ 4–1.606 Agency procedure.

(a) *Limited debarment or suspension.* Where it is determined to debar or suspend a concern the responsible Debarring Officer shall decide whether the debarment or suspension should extend to procurement contracts or to sales contracts or to both. If the debarment or suspension is limited to either procurement contracts or to sales contracts or is otherwise restricted, the listing should so indicate.

(b) *Requests for debarment or suspension action.* (1) When a procuring activity becomes aware of possible irregularities which may be sufficient cause for suspension or debarment of a firm or individual, the case shall be immediately referred through agency headquarters to the Debarring Officer for appropriate determination and action. The case shall be accompanied by a complete statement of facts with recommendations for action.

(2) Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any reason further investigation is considered necessary, the Office of Inspector General shall be requested to assume the investigation. Exceptions are bribery and forgery cases required to be reported directly to the Federal Bureau of Investigation and the Secret Service Division, Department of the Treasury. The Office of Inspector General will advise the Debarring Officers whenever the evidence of criminal offense is such that they should be placed on notice for possible action to (1) postpone contract awards pending the obtaining of further evidence, or (2) take immediate suspension action.

(c) *Notifying General Services Administration of debarments or suspensions.* A copy of all notices of debarment or suspension actions, including removals of debarments or suspensions, taken by the Department shall be furnished, at time of issuance, to the Department Debarring Officer for transmittal to the General Services Administration.

(d) *Removal of debarment or suspension.* The Debarring Officer shall remove debarments or suspensions which he has initiated, and either effected by him or a Board of Contract Appeals, prior to the expiration of the stated period thereof where he finds that the firm or individual has demonstrated a willingness and ability to perform responsibly as a Government contractor.

§ 4–1.650 Foreign firms or individuals. [Reserved]

§ 4–1.651 Debarment or inactivation of auctioneers.

Applicable regulations are prescribed by the Administrator of General Services Administration in section 104, Chapter IV, Title 1, Personal Property Management Regulations of that Administration.

Subpart 4–1.7—Small Business Concerns

§ 4–1.706 Procurement set-asides for small business.

§ 4–1.706–1 General.

(a) *Intent of the small business act.* (1) A Governmentwide small business program has had the support of Congress and successive administrations for many years. This was done in the belief that a healthy small business community is an essential ingredient in a sound national economy. Evidently, therefore, the Congress intended by enactment of the Small Business Act that the set-aside program would provide one means of enabling small firms to receive a fair proportion of the Government's total purchases, would thereby help to maintain a healthy community of small firms and, hence, would assure the existence of a broadly competitive industry.

(2) It is obvious that the effect of the reservation of any procurement for competition exclusively for small business firms, pursuant to the Small Business Act, potentially rules out lower bids of large business firms. Therefore, it is impossible to tell whether, or the extent to which, there might have been lower bids from large firms if we had not made small business set-asides. Should the price, in some individual cases, be higher than that which might otherwise have been possible through completely unrestricted competition, this possibility was recognized and accepted. Presumably, the possibility of a slightly higher price of some procurements was believed to be overwhelmingly offset by the assurance of small business competition in future procurement. With such continuing competition, of course, the Government will be assured of lower prices in the long run. (See Comp. Gen. Dec. B–152153, December 30, 1963.)

(3) In a broader sense, Congress intended by the passage of the Small Business Act that there be an increase in the dollar amount of Government contract awards to small business through whatever means that are reasonably available to accomplish this end.

§ 4–1.706–2 Review of SBA set-aside proposals.

(a) *Who determines if a class set-aside is in accord with the intent of the Small Business Act?* (1) The Small Business Act empowers the SBA and the Government contracting officer to set aside proposed procurements for exclusive competition among small business concerns when such action is determined to be (i) in the interest of maintaining or mobilizing the Nation's full productive capacity; (ii) in the interest of war or national defense programs, or (iii) in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) are placed with small business concerns. Determinations under (iii) of this subparagraph may be made by the contracting officer and the SBA representative. Proposed determinations under (i) or (ii) of this subparagraph shall be referred to the Director of Plant and Operations.

(2) Whether a contract or class of contracts should be necessarily set aside in order to assure that small business concerns receive their fair proportion of the total contracts for the Government is primarily an economic determination. The initiation of a set-aside recommendation by the SBA representative shall be assumed to be his finding that the proposed action is required from an economic standpoint. This finding shall be accepted for purposes of the required joint determination except as it may affect the economics of products wherein this Department has a primary program interest (i.e., agricultural commodities, including timber disposal) and for which we should verify the finding. Section 1–1.706–5 requires that if this economic determination is made, the procurement shall be set aside for exclusive small business participation where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of small business concerns so that awards will be made at reasonable prices. Whether or not there is such a reasonable expectation can usually be determined by the contracting officer but if in the negative, the recommended set-aside action shall be disapproved in accordance with § 1–1.706–2.

(3) While this procedure is quite appropriate for individual procurements, the application thereof to class set-asides would only be practical with the following understanding with SBA representatives:

(i) That the economic determination be made for the entire class, i.e., that the contracting officer should not be left to determine whether an exception of an individual case from the class set-aside should be requested or made on economic grounds;

(ii) Having entered into a class set-aside agreement with SBA, the contracting officer may request the SBA to except an individual case on the basis of inadequate competition, adverse effect on agency programs, or other good reasons, in accordance with the procedures of § 1–1.706–3.

(b) *When can a proposed set-aside be refused?* The review of SBA set-aside proposals is covered in § 1–1.706–2. However, the circumstances under which a set-aside proposal may be refused are not stated therein—there are listed some considerations which, in themselves, are not sufficient cause for not making a set-aside. When a total set-aside of either an individual contract or class of contracts is proposed, it may be denied only:

(1) Where, for Agricultural commodities, including timber disposal, the contracting officer or other agency official cannot verify that such action is in the interest of assuring that a fair proportion of the total contracts for the Government are placed with Small Business concerns; or

(2) Where the contracting officer, after reviewing prospective bidders including any recommended by the SBA representative, cannot establish that there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices; or

(3) Where the proposed action would have serious adverse effects on Department programs. Whether these program impacts indicate that a set-aside would be imprudent and therefore would justify a refusal is a judgment question which, in the event of dispute, may warrant clearance with agency headquarters and the Office of Plant and Operations before refusing a set-aside proposal.

§ 4–1.706–5 Total set-asides.

(a) *Why does the Government make set-asides in construction work?* Prior to 1958 the language of the Small Business Act did not make reference to construction and as a consequence it was considered that the set-aside authority did not extend to Government construction procurement. To resolve any doubt as to the applicability of the set-aside program to construction contracts, the Congress amended the Small Business Act in 1958 to specifically provide that small business should receive "A fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction)". This change in the law accordingly authorizes set-asides of construction contracts.

(b) *Is construction all one class for purposes of class set-asides?* The Small Business Act was amended to include authority for class set-asides in order to make the Small Business Assistance Program more efficient by authorizing classes of Federal contracts to be earmarked for small business without the necessity for earmarking every specific Federal contract. There is no difference in the requirements for determinations between individual and class set-asides. Whether these requirements can be reasonably met for such differing construction as (1) dwellings, (2) bridges, and (3) small dams, must be considered recognizing the substantially different character of firm involved in each type of construction and accordingly the difference in economic characteristics, extent of competition available, geographic concentration of work, etc. The Small Business Administration has made arrangements with a number of agencies which provide that they will consider that SBA has initiated set-asides on all construction contracts estimated to cost less than $500,000. Such class set-asides may be agreed to for any category of construction work, although not necessarily for all construction work, dependent upon whether the criteria of §§ 1–1.706–2 and 1–1.706–5 are met.

§ 4–1.706–6 Partial set-asides.

Procurements in this Department are rarely of a type severable into two or more economic runs or lots where partial set-asides are feasible. If partial set-asides are deemed practicable by the contracting officer, instructions and procedures therefor may be obtained from § 1–1.706–6.

§ 4–1.708 Certificate of competency program.

§ 4–1.708–2 Applicability and procedure.

Where a bidder is determined not to be qualified for reasons other than capacity or credit, i.e., lack of integrity, consistent record of default under prior contracts, questionable business practices, etc., the contracting officer has the responsibility for rejection without referral to SBA. (See § 4–1.310–5.) (See 37 Comp. Gen. 676; Decision Comptroller General of the United States, B–138233, February 24, 1959; and 38 Comp. Gen. 864.)

Subpart 4–1.8—Labor Surplus Area Concerns

§ 4–1.801 Definitions.

§ 4–1.801–2 Labor surplus area.

Within the Department, information regarding labor surplus areas is issued periodically in Plant and Operations Memorandum No. 28, and supplements thereto.

§ 4–1.804 Partial set-asides for labor surplus area concerns.

§ 4–1.804–1 General.

Procurements in this Department are rarely of a type severable into two or more economic production runs or lots where partial set-asides are feasible. If partial set-asides are deemed practicable by the contracting officer, they may be made, following the procedures prescribed in § 1–1.804 of this title.

§ 4–1.807 Report on preference procurement in labor surplus areas.

(a) *Agencies required to report.* Each agency in the Department which places contracts to be performed in surplus labor areas under Subpart 1–1.8 and § 1–2.407–6 of this title shall report such procurement in accordance with this section.

(b) *Frequency and due date.* Reports shall be prepared quarterly and submitted, in quadruplicate, to the Procurement and Contract Management Division, Office of Plant and Operations within 30 calendar days after the close of each calendar quarter.

(c) *Report format.* The data reported shall be arranged as shown in § 4–16.853.

Subpart 4–1.9—Reporting Possible Antitrust Violations

§ 4–1.901 General.

All suspected violations of the antitrust laws shall be reported to the Office of Plant and Operations for review and referral to the Attorney General as may be necessary.

Subpart 4–1.11—Qualified Products

§ 4–1.1101 Procurement of qualified products.

(a) *Product not listed.* If a bidder indicates in his bid that the products offered have been tested and approved for inclusion in the Qualified Products Lists, but the latest lists available to the contracting officer do not include such products, the qualifying agency named should be requested to verify that the products have been tested and approved. Should any delay or difficulty arise in obtaining prompt verification, the matter should be referred through appropriate agency channels to the Office of Plant and Operations, which will obtain the information from the General Services Administration. If the bidder furnished with his bid a copy of the notice of approval issued by the qualifying agency, no verification should be necessary.

(b) *Distribution of lists.* Arrangements may be made with the Office of Plant and Operations for obtaining copies of the Federal Qualified Products Lists.

Subpart 4–1.16—Reports of Identical Bids

§ 4–1.1601 General.

Executive Order 10936 is applicable to all program functions of the Department, except for exemptions that may be made thereunder by the Attorney General, and the provisions of Subpart 1–1.16 shall be followed in giving effect thereto.

§ 4–1.1603–2 Preparation of reports.

(a) See § 4–16.903—DJ1500 for the report form and instructions for preparation.

(b) Where the volume of identical bids so warrants, arrangements may be made with the Department of Justice, through the Office of Plant and Operations, for preparation and submission of the data in other format, such as machine listings.

PART 4–2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 4–2.2—Solicitation of Bids

Sec.
4–2.201 Preparation of invitations for bids.
4–2.202 Miscellaneous rules for solicitation of bids.
4–2.202–3 Place and method of delivery of supplies.
4–2.203–3 Publicity in newspapers and trade journals.
4–2.205–5 Release of bidders mailing list.

Subpart 4–2.4—Opening of Bids and Award of Contract

4–2.404–2 Rejection of individual bids.
4–2.405 Minor informalities or irregularities in bids.
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4–2.407–50 Effect of acceptance period.
4–2.407–51 Availability of funds.
4–2.407–52 Award of small value items.
4–2.407–53 Erroneous award.

AUTHORITY: The provisions of this Part 4–2 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–2.2—Solicitation of Bids

§ 4–2.201 Preparation of invitations for bids.

(a) *Supply and service contracts.* It is desirable to achieve standardization of arrangement of invitations for bids to the extent practicable so that bidders may become familiar with a uniform format and to facilitate assembly of bid invitations generally. The following sections of the invitation for bids should generally be arranged in sequence and include the following information:

Invitation for Bids.
Instructions to Bidders.
Schedule of Items.
Special Provisions.
Specifications.

(1) There should be shown on the face of the invitation for bids a listing of attachments which are to form a part of the bid invitation and resultant contract as follows:

The following attachments hereto form a part of this invitation for bids and any resultant contract: (list attachments).

(2) Instructions to bidders: The first page of the attachments to the invitation for bids form should ordinarily contain any instructions to bidders necessary to supplement those appearing on the form, i.e., identification of bid envelopes, directions for inspection of contract site, submission of samples, etc. Such instructions should include only those necessary to enable the bidder to submit his bid and would not include contract provisions.

(3) Schedule of items: Ordinarily, the items to be purchased will be listed on Standard Form 36, Continuation Sheet. The item description will either include the necessary specifications or refer thereto. When Federal Specifications are referenced, the item description should be sufficient to indicate to the bidder the size, type, and class of item in general terms so that he may readily determine if the item is one that he can furnish, in which case he can refer to the Federal Specification for detailed requirements. (See § 4–1.307–2 of this chapter.)

(4) Special provisions: This section of the bid invitation should include any provisions considered necessary to supplement those appearing in Standard Form 32, General Provisions, or other printed general provisions. They would include such provisions as liquidated damages, delivery time requirements, etc.

(b) *Grouping of items of like nature*—(1) *General.* In many instances, there is an advantage to both the Government and the bidders if items specified in an invitation for bids are grouped so as to allow prospective bidders to bid on a group of related items rather than on individual items of relatively low value. When the individual items are fairly substantial in amounts, however, bidders should be given the option of bidding on such items in addition to a lump-sum bid on a group of related items.

(2) *Grouping by class of item.* When grouping items by class, the commercial trade practices of commodity distribution should be followed to the extent feasible. For example, while bolts of all types may usually be purchased from a general hardware distributor, the longer lengths are also available from pole line hardware distributors who should be given an opportunity to bid by appropriate grouping of bid items. This practice will assure that the bid invitation will reach a maximum number of potential bidders.

§ 4–2.202 Miscellaneous rules for solicitation of bids.

§ 4–2.202–3 Place and method of delivery of supplies.

(a) *General rule.* Invitations for bids should specify destination prices only, whenever practicable. In any event, however, to avoid confusion, the point at which the Government will accept delivery must be stated clearly and concisely.

(b) *F.o.b. shipping point and f.o.b. destination.* In some instances it may be to the advantage of the Government to solicit prices on the basis of both f.o.b. shipping point and destination. (See 20 Comp. Gen. 761.) Illustrations of cases when it would be to the interest of the Government to solicit prices both ways are:

(1) When it is the custom of the industry to bid a shipping-point price only;

(2) When it is to the advantage of the Government to encourage competition by including bidders who will bid a shipping-point price only;

(3) When the cost of the transportation of the commodity is substantial in relation to the cost of the commodity, to bring into the competition the contractor who cannot or is unwilling to meet the large transportation costs;

(4) When the ultimate destination is known and when the quantity to be purchased is estimated to weigh 20,000 lbs. or more, except for those items that are of a fragile nature or are otherwise exceptionally susceptible to damage in transit; and

(5) When the ultimate destination is known and when the quantity to be purchased is estimated to weigh 100,000 lbs. or more, and is of a fragile nature or otherwise exceptionally susceptible to damage in transit.

(c) *Provision for use of Government-shipping media on f.o.b. destination bids.* Prices may be solicited on a destination basis even though special or reduced transportation rates have been made available under section 22 of the Interstate Commerce Act. Such cases are very infrequent, but when they occur, reservation should be made in the invitation for bids for the right to require shipment on Government bills of lading and to deduct from the quoted destination price the normal rate involved, with opportunity afforded other bidders to meet the advantage so accruing to competitors by offers to equalize such savings in transportation costs, and with provision for bidders to show the extent of their willingness in that respect, and their guaranteed maximum shipping weights.

(d) *Shipping point prices only.* Solicitation of prices f.o.b. shipping-point, without asking for delivered prices also, should be made only in rare instances. Such a solicitation would be proper when the points of use are not known definitely at the time bids are solicited and prices are desired f.o.b. shipping point for shipment of the material on Government bills of lading to various points throughout the country. This method is frequently used when soliciting bids for indefinite contracts, commonly known as "source of supply" contracts. In all such cases the general area to which goods are to be delivered, if known, should be indicated in the invitation for bids.

(e) *Bid invitation provisions.* Definitions and provisions applicable to various shipping terms that may be used in invitations for bids are stated in General Services Administration Reg. 1–II–209.03. Since most bids are invited "F.o.b. Destination" by this Department, these definitions and provisions are not repeated here but should be used wherever there may be any question as to the intent of shipping terms used in a bid invitation.

§ 4–2.203–3 Publicity in newspapers and trade journals.

In soliciting bids for the purchase of supplies or services, it shall be the responsibility of the officer inviting the bids to determine whether advertising in newspapers is necessary in order to cover adequately the field of competition. The contracting officer shall in all cases determine the adequacy of the competition solicited. In placing official advertising no favoritism shall be shown to any publication and there shall be no discrimination either for or against any publication because of its editorial attitude. The sole consideration to govern in the placing of advertising shall be the legality of the use of the medium and its adequacy for the accomplishment of the purpose of the advertising. (See 1 AR 391 for authorities and procedures regarding publication of advertisements.)

§ 4–2.205–5 Release of bidders mailing list.

(a) No bidder will be informed as to the person or firms with whom he is competing. He may, of course, attend bid openings or call at the office which conducted the opening at a later date and thereby obtain information concerning those bidding and those declining to bid in particular cases. Bidders' mailing lists should not be made public, but a firm's representative may be advised whether or not his firm's name is on a particular list and a dealer may be told whether the manufacturer he represents is listed.

(b) See § 1–2.205–5 for policy on construction contracts.

Subpart 4–2.4—Opening of Bids and Award of Contract

§ 4–2.404–2 Rejection of individual bids.

(a) *More than one bid by same bidder.* If more than one bid is offered by any one party, by or in the name of his clerk, partner, or other agent or representative or by two or more affiliated companies, all such bids may be rejected. However, when multiple bidding is prejudicial either to the United States or to other bidders, rejection is required. (See Comp. Gen. Dec. B–142957, dated June 27, 1960.) This will not prevent a bidder from submitting modified or alternative bids quoting different prices on different qualities of material or different conditions of delivery.

(b) *Alternative bids.* An alternate bid as contemplated by the provisions of this paragraph, is one that offers equipment not meeting the minimum requirements of the advertised specifications. A bid is not necessarily an alternate bid merely because a bidder designates it as such in his bid. Many times, bidders will submit more than one bid price based on differing qualities of materials, all or some of which may meet the advertised specifications. A low bid meeting the advertised specifications, whether or not it is designated by the bidder as an "alternate" bid, is properly for acceptance.

(c) *Indefinite bids.* A bid that is indefinite as to bid price, terms, or conditions shall be rejected.

§ 4–2.405 Minor informalities or irregularities in bids.

(a) *General.* Informalities in bids are deviations from the advertised specifications which may or may not affect consideration for award, depending upon the nature of the deviations involved. The primary question for determination is whether the deviation from the requirements goes to the substance of the bid so as to affect price, quantity, or quality of the articles offered or is otherwise prejudicial to the rights of other bidders, or is merely a matter of form or other immaterial or inconsequential variation. (See Comp. Gen. Dec. B–146539, dated Aug. 10, 1961.) In such circumstances, the general rule for consideration in the awarding of bids is found in the syllabus to 17 Comp. Gen. 554, which is as follows:

To permit acceptance of bids not complying in substance with advertised specifications would be farcical and destructive of open-competitive bidding in awarding of contracts, strict maintenance of the rule being infinitely more in public interest than obtaining apparently pecuniary advantage in a particular case by its violation. 17 Comp. Gen. 409, amplified, and 15 Comp. Gen. 107, distinguished.

Also, in 16 Comp. Gen. 392, it is stated:

In the awarding of Government contracts, there is a well-established principle that the contract offered the successful bidder must be the exact contract which was submitted to competition.

(b) *Unsigned bids.* Unsigned bids must be rejected unless accompanied by a bond, letter or other signed documentary evidence; or samples, required by the invitation, have been furnished by the bidder; clearly establishing his intent to submit a bid. (See 17 Comp. Gen. 497 and B–124029 of June 1, 1955.) The decisive question is whether acceptance of the bid as submitted will effect a contract binding on the bidder and questionable cases should therefore be referred to the Office of the General Counsel for determination as to whether acceptance will create an enforceable contract.

(c) *Bids not on Government forms.* Bids not on Government forms may be accepted provided (1) the language of the bid clearly indicates that it is in response to the advertised invitation for bids, (2) that which is offered is in accordance with the advertised specifications, and (3) no right is reserved by the bidder which would limit his liability to a greater extent than was provided in the invitation for bids. When such a bid is accepted the complete invitation for bids in blank, shall be attached to the accepted bid and made a part of the contract.

§ 4–2.405A Informalities of substance.

Informalities of substance are material deviations from requirements affecting price, quantity, or quality, or the rights of other bidders, or conditions imposed by a bidder to limit his liability to the Government for delays, failure to perform, etc. Rejection of bids containing such informalities is mandatory. This precludes the deletion after opening of bids of objectional conditions imposed by the bidder, even though such deletion would result in a responsive bid. (See 34

Comp. Gen. 24; 30 Comp. Gen. 179; and 31 Comp. Gen. 660.)

§ 4–2.406 Mistakes in bids.

§ 4–2.406–1 General.

(a) *General.* As a general rule a bidder cannot withdraw or change his bid after opening. Such rule does not apply where the bidder establishes, prior to award, that he made an honest mistake, since acceptance of a bid with knowledge thereof does not constitute a valid or binding contract. If the contracting officer has actual or constructive notice of an error in a bid after opening he shall request from the bidder a verification of the bid, calling attention to the suspected mistake and stating why he suspects a mistake has been made. If the bidder alleges a mistake, the matter shall be processed in accordance with this section. Such actions shall be taken prior to award. A representative of the bidder has authority to verify the bid if it appears that he is an employee of the bidder and is present at the bid opening in such capacity. (See 14 Comp. Gen. 453, 36 Comp. Gen. 441, and 17 Comp. Gen. 575 and 576.)

(b) *Correction of mistakes.* Except for mistakes which the contracting officer is authorized to correct in accordance with § 1–2.406–2, all cases involving the correction of mistakes in bids disclosed before or after award of procurement or sales contracts shall be forwarded, through agency channels, to the Office of the General Counsel for appropriate determination. Whenever a mistake in bid is alleged or disclosed, the contracting officer shall advise the bidder or contractor to support the alleged error by written statements and by all pertinent evidence, such as the file copy of the bid, original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations (if any), published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended. Supporting data to be submitted to the Office of the General Counsel must include:

(1) All evidence furnished by the bidder or contractor.

(2) A copy of the bid or a copy of the contract and any specifications or drawings relevant to the alleged mistake, and any change orders or supplemental agreements thereto.

(3) An abstract or record of the bids received.

(4) A written statement by the contracting officer setting forth—

(i) Specific information as to how and when the mistake was alleged or disclosed;

(ii) A summary of the evidence submitted;

(iii) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based;

(iv) In the event only one bid was received, a quotation of a recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services, and the basis for such estimate;

(v) Any additional evidence considered pertinent, including copies of all relevant correspondence between the contracting officer and the contractor or bidder concerning the alleged mistake;

(vi) The course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and, if other than a change in contract price is recommended, the manner by which the item will otherwise be procured; and

(vii) The status of performance and payments under the contract, including contemplated performance and payments.

The determination and all relevant material will be returned through channels to the contracting officer for maintenance of the official files thereon. A copy of the determination shall be attached to each copy of any contract recision or reformation resulting therefrom.

(c) *Handling of bid mistakes where time will not permit delay in award.* When time is of the essence, because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone through channels to the General Counsel for appropriate action. However, where time will not permit delaying award, the bid should be accepted as made, subject to final determination.

(d) *Bidders' refusal or failure to furnish evidence.* Where the bidder refuses or fails to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders in which case it may be rejected. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(e) *Maintenance of records.* Copies of all administrative determinations made pursuant to the authorities of this paragraph shall be included in agency procurement files. Where a contract is awarded, a signed copy of the determination shall be filed with GAO copy of the contract.

§ 4–2.407 Award.

§ 4–2.407–1 General.

(a) *Submission of questions directly to Comptroller General by contracting officers.* In order to minimize delay in making awards of Government contracts, contracting officers may submit questions, other than those arising from mistakes in bids, involving the awarding of a contract directly to the Comptroller General for advance decisions. (See 1 GAO 3060.10.)

(b) *Marking of bids.* Under no circumstances will any individual make any marks or notation on the bid or its accompanying documents. If, through error or for some other reason, marks are made on a bid or its accompanying documents, the markings should not be erased or eradicated; instead, the individual so marking the bid shall file a signed explanation with the bid file for future reference, showing when, how, and why the notation or markings were made. If the marked bid is accepted, explanation with regard thereto should be made on the statement of award.

(c) *Numbering of contracts.* See Title 7 of Department Administrative Regulations.

(d) *Access by the public to contract records.* Copies of contract documents may be furnished to the public only under circumstances stated in 1 AR 534 et seq. (7 CFR 1.1 et seq.)

§ 4–2.407–50 Effect of acceptance period.

(a) *Award within acceptance period.* As bids are opened, they should be carefully examined to note the acceptance periods designed by bidders for acceptance of their bids. Steps should then be taken to make an award as quickly as possible, and in time to insure award prior to the expiration date of the period. Fluctuating elements affecting quoted prices usually enter into bidders' calculations, and prompt information as to whether or not they will receive the award should be given in order to maintain good business relations.

(b) *Expiration of acceptance period—notification to bidder.* If the acceptance period of the successful bidder is about to expire and it is impossible to prepare the contract documents in time to reach the contractor before the expiration date, the successful bidder should be notified of award either by wire or letter, whichever is more practical. Placing of a letter of notification or a confirmation copy of a telegram of notification in the mails prior to the expiration of the period generally constitutes acceptance of the proposal within the acceptance period. However, this practice should not be followed except when actually necessary, since controversy may arise as to whether the award is binding.

(c) *Extension of acceptance period.* Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any). The written extension, when granted, must be made a part of the bid acceptance.

(d) *Awards where the acceptance period of the low bidder has expired.* Ordinarily, where a low bidder's acceptance period expires before acceptance and contract award, and regardless of the reason therefor, any award shall be to the next low bidder whose acceptance period is effective at the time. Such award is preferable, from the standpoint of preserving the integrity of the competitive bid system, to allowing the low bidder to renew his acceptance period after it has expired. (See Comp. Gen. Dec. B–151186, of April 29, 1963.) It will be necessary to explain in the file in such

instances the circumstances surrounding the failure to secure award prior to the expiration date, with a showing that award to the next low bidder was in the best interest of the Government, and that no appreciable saving could have been obtained by readvertising. Nonetheless, award may be made to the low bidder who renews his acceptance period after it has expired in cases where all bids have been improperly rejected, or where purchases can be made against the account of a defaulting contractor from the second low bidder on the original contract.

Prior to award of the contract or any subsequent change therein, the contracting officer should have written assurance that sufficient funds are available within the current allotment and are reserved for the proposed action. (See 39 Comp. Gen. 340.) However, where required by unusual circumstances, a contract may be executed with a condition therein that the liability of the Government for payment of all or a portion of the contract amount is subject to availability of funds therefor. A contract provision somewhat as follows is suggested.

Funds are available in current appropriations and reserved for this contract in the amount of $_____. Completion of the contract is contingent upon appropriation of funds therefor. No legal liability on the part of the Government for the payment of more than $_____ shall arise unless and until such appropriation shall have been provided.

See 16 U.S.C. 557a regarding statutory authority and requirements for such conditional contracts in connection with administration of national forests.

§ 4–2.407–52 Award of small value items.

In view of the administrative cost involved in issuing separate small purchase orders, the policies stated herein shall be observed in making awards under invitations which provide for the acceptance of individual items or groups of items. (See the terms and conditions of the invitation for bids on the reverse of SF–33.) When numerous small orders would result from awards to each low bidder on an invitation, and it is clear that (1) any of the prospective bidders would be in a position to furnish all of the items required, or related categories of items, and (2) the items are of such a character that suppliers would normally be interested in receiving only a substantial part of those quoted on, the following shall be observed:

Awards to low bidders will be determined and then reviewed to identify those awards which are of small dollar value in relation to the total number of items bid on by the low bidder and which awards the low bidder would probably prefer not to receive.

Ascertain the additional cost of the items which would be involved by awarding the small portion to another bidder already in line to receive an award on substantial quantities of other items and who also submitted a bid on the same small portion. If the additional cost involved is less than $10, then the award should be made to the bidder already in line to receive a substantial award, providing that it is determined that the low bidder's interest in the award is negligible, considering the level of trade of such bidder. However, in any case where the low bidder desires the award, it shall be given him if eligible.

Whenever award is made to other than the lowest acceptable bidder in accordance with this section, the purchase file shall reflect, for each item so awarded, the amount of the additional cost.

§ 4–2.407–53 Erroneous award.

(a) *Procedure—no deliveries made.* If, through error, award is made to other than the low bidder and delivery has not been accomplished prior to time of discovery of the error, the vendor receiving the award should be advised of such error and requested to consent to cancellation of the award. In the event of his refusal to consent to cancelation, the case should be formally submitted, under the signature of the Secretary of Agriculture, to the Comptroller General, and the vendor advised to suspend action pending the Comptroller's decision.

(b) *Procedure—delivery made.* If the vendor has proceeded with delivery before the error has been discovered, the following procedure will govern:

(1) *Deliveries partially completed.* The vendor should be immediately instructed to make no further deliveries. The matter should then be formally submitted to the Comptroller General for a decision as to action to be taken, and the vendor so advised.

(2) *Delivery completed.* The matter should then be presented through regular agency fiscal channels to the General Accounting Office for determination as to the amount due.

PART 4–3—PROCUREMENT BY NEGOTIATION

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Sec.
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AUTHORITY: The provisions of this Part 4–3 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–3.1—Use of Negotiation

§ 4–3.150 Board of contract awards.

(a) *Establishment and duties.* A Board of Contract Awards consisting of not less than three members shall be established at each agency headquarters and each field contracting office where negotiated contracts are awarded. Except as indicated in § 4–3.150(b), it shall be the duty of the Board to (1) review all proposals received, (2) weigh the relative merits of each proposal, (3) select the prospective contractor, and (4) specify such price ceilings and contract terms and conditions as the Board deems appropriate for guidance in negotiating the contract. The contracting officer shall have the final responsibility for negotiation and award of the contract. A summary statement of the contract negotiations and the basis of award in accordance with Subpart 1–3.3 shall be made a part of the contract file.

(b) *Exceptions.* Negotiated contracts may be awarded by the contracting officer without referral to a Board of Contract Awards when: (1) not in excess of $2,500; (2) for public exigency; (3) for procurements outside the United States, or (4) for subsistence supplies. Changes to existing contracts need not be referred to the Board.

Subpart 4–3.2—Circumstances Permitting Negotiation

§ 4–3.203 Purchases not in excess of $2,500.

(a) *Application.* The final consideration in determining whether to use this authority is the amount of money involved in the total known requirement that it is practicable to purchase at one time or provide by means of a term contract. In determining practicability, available funds, storage facilities, market conditions, etc., are pertinent factors for consideration.

(b) *Procedure.* Purchases under this authority should be made without formal invitation for bids unless it is clearly in the best interest of the government to do so. However, competition should be obtained in accordance with the policy stated in § 1–3.603–1.

§ 4–3.204 Personal or professional services.

(a) *Limitations.* (1) The use of purchasing procedures for obtaining personal services must be authorized under the statutes or conditions stated in § 4–4.5068.

(2) Where exception to advertising requirements is contained in the statute authorizing purchase of personal services, that authority shall be cited and used rather than the authorities herein.

(3) Where authorities herein are to be used for obtaining professional engineering, architectural and landscape architectural services for any public building or public improvement (exclusive of bridges, roads, sidewalks, sewers, mains, or similar items), the construction cost of which is estimated to be $200,000 or more, request to use this authority shall be submitted to the Director of Plant and Operations, for his approval and submission to the General Services Administration for clearance.

§ 4–3.211 Experimental, developmental, or research work.

(a) *Authority.* Pursuant to section 307(b) of the Act, the determination referred to in § 1–3.211 of this title shall be made by the Chief, Procurement and Contract Management Division, Office of Plant and Operations for requirements under $25,000; otherwise, the case shall be referred to the Director of Plant and Operations for his recommendation and referral to the Secretary.

(b) *Limitations.* Negotiation under this authority is subject to the prior approval of the Chief, Procurement and Contract Management Division, Office of Plant and Operations.

(c) *Reporting requirement.* The reports referred to in § 1–3.211(c) of this title shall be submitted in an original and two copies to reach the Procurement and Contract Management Division, Office of Plant and Operations, within twenty workdays after the close of the period covered by the report.

§ 4–3.212 Purchases not to be publicly disclosed.

Pursuant to section 307(b) of the Act, the power of the Secretary to make the determination referred to in § 1–3.212 of this title is not delegable. Requests for use of this authority shall be submitted to the Director of Plant and Operations, for his approval and submission to the Secretary.

§ 4–3.213 Technical equipment requiring standardization and interchangeability of parts.

Pursuant to section 307(b) of the Act, the power of the Secretary to make the determination referred to in § 1–3.213(a)(1) of this title is not delegable. Requests for use of this authority shall be submitted to the Director of Plant and Operations, for his approval and submission to the Secretary.

§ 4–3.214 Negotiation after advertising.

Rejected items may be readvertised, in accordance with § 1–3.214; however, if proposed to be negotiated, the reasons therefor are to be submitted to the Chief, Procurement and Contract Management Division, for his determination in accordance with sections 302(c)(14) and 303(b) of the Act.

Subpart 4–3.3—Determinations, Findings, and Authorities

§ 4–3.305 Form and requirements of determinations and findings.

No specific form of determinations is required.

§ 4–3.350 Authorities.

§ 4–3.350–1 Statutory.

Procurement by negotiation is authorized under Title III of the Federal Property and Administrative Services Act of 1949, as amended. The Administrator of the General Services Administration has delegated authority to executive agencies to use this title. (See § 4–52.601.)

§ 4–3.350–2 Administrative.

Contracting authority is required in accordance with § 4–1.453 whenever a formal contract is to be executed; otherwise, purchasing authority is necessary in accordance with § 4–1.454. Subject to the limitations prescribed in these regulations, agencies may procure property and services by negotiation under any of the exceptions contained in the Act, as stated in §§ 1–3.201 to 1–3.215, inclusive.

Subpart 4–3.4—Types of Contracts

§ 4–3.409 Indefinite delivery type contracts.

(a) *General.* When there exists a recurrent need for supplies or services, it may be economical to execute a term contract in lieu of continued individual purchases. No such term contract (except for public utility service and Forest Service aerial facilities and services) shall be made for a period extending beyond the fiscal year in which executed unless the appropriation adequate for its fulfillment is available for both the fiscal year in which the contract was executed and the next succeeding fiscal year as well. Additionally, contracts for stationery or other supplies for a longer term than 1 year from the time the contract is made may not be made unless the authority for the contract specifically exempts it from 41 U.S.C. 13. (41 U.S.C. 11 and 13.) There are several types of term contracts that may be executed to meet varying needs; they are as follows:

(b) *Definite quantity.* A definite quantity term contract runs for a specified length of time with successive deliveries according to schedules established by the Government, or ordered as the need arises. When the quantities specified in a definite-quantity term contract have been delivered, the contract shall be considered completed and no additional quantities shall be ordered under the contract. The apparent probability that the additional supplies may be furnished at less expense by the original contractor because of being engaged upon the original work or otherwise is not controlling of the matter as to whether additional requirements must be advertised. Whether the original contractor can furnish the supplies at less expense to the Government than any other contractor is possible of definite determination only by soliciting competitive bids as contemplated under said section. (See 11 Comp. Gen. 183 and 5 Comp. Gen. 508.)

(c) *Estimated quantity with variance clause.* It may be impossible to determine in advance exactly what the needs will be over a stated period of time, yet the quantity required can be estimated with reasonable accuracy. The procedure to follow in such instances is to execute a term contract for an estimated quantity with a reasonable variance to the extent it can be definitely established. This estimated amount should be obtained from records of consumption during a prior similar period or, in the event this is an entirely new requirement, by carefully weighing the probable needs for the stated period. (See 14 Comp. Gen. 446, and 11 Comp. Gen. 183.)

(d) *Source of supply.* When it is impossible to meet the need for certain supplies or services by either individual definite-quantity term-contracts, or estimated-quantity-with-variance-clause term contracts, there may be executed term contracts for such quantities as may be required during a stated period. These contracts are sometimes called "source of supply" contracts. Contracts of this character should not be made, however, if the need can be met by one of the types of contracts mentioned above, for there is a possibility that bidders may quote higher prices than for definite-quantity contracts to protect themselves against possible contingencies.

(1) *Mutuality of consideration.* When advertising for bids on an indefinite-quantity term contract ("source of supply") basis there must be included therein an estimate of the probable needs during the stated contract period (based upon the best information available at that time) so that all bidders will be on notice of the probable quantities to be required under the contract; also, appropriate language must be included to the effect that this estimate of needs is for information only and is not intended to imply that the estimate is an exact indication of the quantity that will be required. Further, to insure mutuality of consideration so that there will exist a valid and legal contract, the invitation for bids and resultant contract must specifically provide that the Department of Agriculture activity or activities involved will procure all of their needs during the stated contract period from the successful bidder (contractor) at the prices quoted and accepted by award of contract and that in consideration thereof, the successful bidder (contractor) guarantees, by the submission of his bid in response thereto, to furnish all of the contract materials that may be required by the activity or activities involved, during the stated contract period. (See United States v. Purcell Envelope Company, 249 U.S. 313, as distinguished by the Supreme Court of the United States in Willard Sutherland & Company v.

United States, 262 U.S. 489 regarding mutuality of consideration.)

(2) *Application of estimated quantities to award evaluation.* If the invitation for bids on a "source of supply" contract basis includes a single item only, or there is more than one item but award is to be made by items, the low bidder(s) is ascertained by a comparison of the unit prices. However, it is sometimes necessary for efficient operation of a contract to stipulate in the invitation for bids that award will be made on "all or none" basis, i.e., award will be made to one bidder for all items. Under these conditions, the invitation for bids should also prescribe the basis of award, i.e., how the low bidder will be determined. This may be accomplished by including a provision to the effect that award will be determined by evaluating the various unit prices quoted with the estimate of needs shown in the advertisement. This is done by multiplying the unit prices quoted by such bidder by the estimate of the respective items as shown in the advertisement and then totaling the items for each bidder; this will give the estimated total cost which will decide the bidder to receive the award if otherwise satisfactory.

(e) *Approximate quantities.* 14 Comp. Gen. 723 deals with a contract executed for "approximately 60,000 pounds" of gray iron castings to be delivered over a 12-month period. In rendering this decision, the Comptroller General finds such contracts to be of doubtful legality and requests that they not be executed.

Subpart 4–3.6—Small Purchases

§ 4–3.604 Imprest funds (petty cash) method.

§ 4–3.604–5 Limitations.

(a) The amount of any Imprest Fund will not exceed $1,000.00.

(b) Agencies desiring an exemption to the limitations in §§ 1–3.604–5(a) and 4–3.604–5(a) may request the exemption by submitting a justification based upon purchasing needs and the particular reimbursement cycle. Such requests should be submitted to the Director of Finance for his approval, and, with the concurrence of the Director of Plant and Operations, submission to the Chief Disbursing Officer for consideration.

§ 4–3.604–6 Procurement and payment.

(a) The time limit for the consummation of each purchase for which cash is furnished in advance shall be five work days from date of advance. When circumstances indicate a longer period of time is generally necessary in order to fully utilize the imprest fund procedure, requests for authority to establish a longer time for specific programs or locations shall be made to the Director of Finance.

§ 4–3.604–50 Authority.

The authority for these instructions is derived from the individual series of instructions of the General Services Administration, the Treasury Department, and the General Accounting Office, insofar as they relate to their respective areas of responsibility. Agencies shall utilize the cash payment techniques set forth in §§ 1–3.604 and 4–3.604 whenever practical.

§ 4–3.604–51 Definition of cashier.

A "Cashier" is an employee of the Department designated as a cashier in accordance with § 4–3.604–52 of this subpart. An "Alternate Cashier" is one who has been designated in the same manner as a cashier but who will function in such capacity (a) during the absence of the principal cashier and/or (b) where the volume of work requires the principal to have alternates, in which case the principal will advance funds on the basis of a receipt signed by the alternate.

§ 4–3.604–52 Designation of cashiers.

In accordance with 7 AR 64, heads of agencies recommend employees for designation as cashiers or alternates. Where imprest funds are to be used primarily for making purchases, requests for designation should be limited, where feasible, to responsible employees in the agency's procurement organization. Upon receipt of the designation and notice of assignment to a position covered by a position schedule bond, the employee is authorized to perform the duties of cashier.

§ 4–3.604–53 Instructions for cashiers.

Prescribed procedures for operating an imprest fund are contained in 7 AR 64 and Treasury Department "Manual of Procedures and Instructions for Cashiers Operating Under Executive Order No. 6166." This manual is furnished by the Treasury Department to each cashier upon his designation. Necessary additional copies required by procurement officers may be obtained through the Office of Plant and Operations.

§ 4–3.604–54 Accountability of imprest funds.

(a) *Custody and safeguarding of funds.* Cashiers should at all times be able to account for the full amount of the fund, either by cash, uncashed Government checks, unscheduled subvouchers, unpaid reimbursement vouchers, or interim receipts for cash. Employees designated to serve as cashiers will act as agents of the disbursing officers who advance them the necessary funds. Since cashiers are personally accountable and responsible for the custody of and payments made from the fund, employees upon whom this authority is conferred should be notified of their responsibility. They are required to utilize, to the fullest extent available, means of safeguarding cash advanced to them, and agencies should take necessary steps to furnish cashiers with suitable facilities for that purpose. Such facilities will depend upon equipment that can be made available and the size of the imprest fund to be safeguarded, but as a minimum, locked storage space must be provided. Consideration should be given to the determinations necessary under § 4–3.604–54(c) in the event of loss or theft of imprest funds. Imprest funds may not be deposited in any bank nor commingled

with personal or other funds. Each imprest fund shall be maintained separately. (See Treasury Manual of Procedures and Instructions, Section 4.)

(b) Responsibility for doubtful transactions. The cashier is authorized, where doubt exists as to the propriety of any transaction, to require written acceptance of responsibility for such transaction from the official authorizing the procurement to provide him recourse to such employee for reimbursement to the fund if the transaction is later disallowed. The cashier may also request an advance written opinion from the certifying officer with respect to a doubtful transaction.

(c) *Physical loss or deficiency.* In the event of physical loss or deficiency in the imprest fund, the General Accounting Office is authorized, in concurrence with determinations and recommendations of the Secretary of Agriculture, to relieve the cashier of responsibility, provided the Secretary determines (1) that such loss or deficiency occurred while the cashier was acting in the discharge of official duties, and (2) that such loss or deficiency occurred without fault or negligence on the part of the cashier. (31 U.S.C. 82a–1.)

§ 4–3.605 Order-Invoice-Voucher.

§ 4–3.605–1 Standard Form 44.

(a) *Prescribed form.* This form may be used, also, for obtaining a receipt from the vendor when the vendor is paid in cash at the time of the purchase.

(b) *Availability of form.* Standard Form 44 is stocked by the Central Supply Section. They are overprinted to show the Department's name, and are serially numbered. Adequate control of the forms should be established so as to readily determine the office issuing the order, should this be necessary.

§ 4–3.605–2 Standard Forms 147 and 148, Order for Supplies and Services.

Department of Agriculture Form AD–38, Purchase Order, is prescribed for use by this Department. See § 4–16.350.

§ 4–3.606 Blanket purchase arrangements.

§ 4–3.606–1 General.

(a) Blanket purchase arrangements may be made by employees to whom purchasing authority has been delegated.

(b) They may be participated in by one or more offices or projects in the same area.

(c) The use of a blanket purchase arrangement does not authorize purchases not otherwise authorized by law or regulation, and such an arrangement may not be used to avoid the statutory advertising requirement normally applicable to purchases of known quantity requirements.

§ 4–3.606–3 Establishment of account.

The vendor-agency relationship is that of an open account. While usually unnecessary, the arrangement may include maximum amount and time limitations. The account may cover certain specific items or commodity groups or classes, or all of the supplies or services the supplier is able to furnish. Its use does not exempt agencies from keeping obligations and expenditures within available funds, but this should be done by avoiding, through the use of simplified methods, a detailed fiscal record of individual transactions.

§ 4–3.606–4 Documentation.

(a) It is the responsibility of the vendor with whom we do business to determine that a purchase chargeable to the Department is made by one who is authorized to purchase from him in the name of the Government. Vendors are generally accustomed to receiving Government purchase orders which they honor even though the signer may not be known to them—this they do somewhat at their own risk. To protect the Government against criticism and the vendor against loss due to unauthorized purchases made from him in the name of the Government, any arrangements with him for making purchases without the use of a purchase order form must be carefully worked out. These arrangements, called Blanket Purchase Arrangements, should be made in person with the vendor. While no documentation is required, it may be desirable to have a record of the arrangement, which may be in the form of a letter, purchase order, or other document, telling the vendor:

(1) Who is authorized to make individual purchases;

(2) How purchases will be placed, i.e., by phone, by certain designated persons ordering and picking up supplies from the vendor, etc.;

(3) What the vendor must do to assure that only authorized purchases are made and to obtain payment, i.e., prepare an itemized sales slip showing order number, if one is given, and which must be signed by an authorized person; send invoice with shipment; give invoice to person picking up supplies; payment to be made once a month, or quarterly, etc.;

(4) What discounts will be given (particularly on repair parts and labor); how time discounts will be handled;

(5) Limitations by class of item, time, or dollar amount.

(b) The following is illustrative of the form of a written blanket purchase arrangement. Arrangements involving special discounts, prices, delivery, etc., are usually terminable by the vendor and accordingly are not contracts requiring signature of the vendor. Term contracts on prescribed contract forms should be used where contractual agreement is desired. It is usually desirable to number such Blanket Purchase Arrangements either in a series of numbers established by the purchasing office or by using the number assigned by the vendor to the agency's account with him:

Sample Format

UNITED STATES DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

Blanket Purchase Arrangement

with

ABC Hardware Co.

Atlanta, Georgia

Account
No. 100
Date
7–1–64

1. *Persons authorized to place orders.*

John Jones, purchasing agent, Joe Smith, mechanic, Tom Sawyer, warehouseman, or such other persons as John Jones, purchasing agent, may indicate by phone to the vendor as authorized to make special purchases.

2. *Procedure for placing orders with vendor.*

Orders will be placed by phone for local delivery or will be ordered and picked up at the vendor's place of business by persons designated above. The buyer will give the vendor an order number for each purchase. The vendor will write up the order on his sales form showing the order number and itemizing the purchase with unit prices and totals. The vendor will secure the receipt of the receiving officer on the sales form and provide one copy to the receiving officer. No written purchase orders on government forms will be issued unless necessary to adequately describe purchase requirements or as may be desired by the vendor.

3. *Billing procedure.*

Invoices in single copy identified with the agency order number and date are to be sent to:

Soil Conservation Service,
1234 X Street,
Atlanta, Ga.

Payment will be made monthly on or about the 10th of the month for all invoices received.

4. *Pricing arrangements.*

Prices on all items shall be as quoted for each purchase or as stated in any applicable contract with the Vendor. However, as agreed with Mr. W. T. Adams of the ABC Hardware Co., all time discounts shall be extended to the 10th of the month following billing or receipt of supplies, amount of time discount to be as stated on the invoice. Trade discounts shall be as quoted but shall generally be 40 percent of list for automotive repair "parts, common"; labor for repair to be at the rate of $3.00 per hour; all supply items to be generally priced at 10 percent less than list for distributors prices.

5. *General.*

No conditions of sale other than as specified herein or as may be mutually agreed to for a specific order shall be applicable to purchases made under these arrangements. These arrangements are effective immediately and until cancelled by the Government or the Vendor.

[SEAL] JOHN JONES,
Purchasing Agent, Soil Conservation Service, United States Department of Agriculture.

§ 4–3.650 Cash purchases.

§ 4–3.650–1 Purpose.

It is the purpose of this § 4–3.650 to describe the various methods by which cash purchases of articles and services may be made and to state governing policies and procedures.

§ 4–3.650–2 Methods of cash purchases.

Following are the various methods by which cash purchases may be made:

(a) Use of Field Party Expense Funds. (See § 4–3.650–3.)

(b) Use of Travel Funds. (See § 4–3.650–4.)

(c) Use of Personal Funds. (See § 4–3.650–5.)

(d) Use of Imprest Funds. (See §§ 1–3.604 and 4–3.604.)

§ 4–3.650–3 Field Party Expense Funds.

Under the authority of the Act of June 3, 1902 (31 U.S.C. 553), funds may be advanced in accordance with 7 AR 598

and 599 for the purpose of making cash purchases by field parties. Such funds may be used for cash purchases where the use of other cash purchase procedures or other established procurement facilities is not feasible. Wages and/or traveling expenses of regular employees shall not be paid from these funds. Otherwise, such purchases may include any field party requirements such as supplies, hire of laborers, food, lodging, transportation, etc., the purchase of which is not otherwise restricted by law or regulation. This authority is especially useful for program operations in foreign countries as well as in isolated, emergency, or other unusual program operations in the United States.

§ 4–3.650–4 Travel expense funds.

Under the authority of the Travel Expense Act of 1949 (5 U.S.C. 835–842), funds may be advanced in accordance with 7 AR 598 and 599. Such funds may be used for cash purchases of only those requirements related to travel in accordance with the Standardized Government Travel Regulations.

§ 4–3.650–5 Personal funds.

Employees authorized to make purchases may procure necessary supplies, equipment, or services from personal funds and be reimbursed therefor in accordance with 7 AR 67. This method of purchase should be considered where establishment of an imprest fund is not feasible, and use of personal funds will simplify the making of small purchases.

§ 4–3.651 Purchase documentation.

§ 4–3.651–1 Purpose.

This section sets forth the requirements for documenting purchase transactions.

§ 4–3.651–2 Policy.

(a) Any documentation of a purchase transaction is permissible that assures the following:

(1) That the vendor and purchaser are in agreement as to what is being purchased.

(2) That at the time of delivery a record of sale and receipt is created.

(3) That at the time of billing for payment, the foregoing requirements have provided evidence of the items, quantity, price, date sold and other relevant data.

(b) These requirements can be met by:

(1) Issuance of a purchase order on SF–44, which form is then used as an invoice and as a receiving report. (See § 1–3.605–1.)

(2) Issuance of a purchase order on Form AD–38, which the vendor either signs as his invoice or provides his commercial invoice, and receipt for supplies is acknowledged on the form or otherwise in writing.

(3) Payment of cash supported by itemized receiving officer's report and vendor's receipt for cash. (See § 1–3.604.)

(4) Verbal order where vendor's itemized job order or invoice is signed by the officer ordering and receiving the supplies. (See also § 1–3.606 on Blanket Purchase Arrangements.)

§ 4–3.652 Cancellation of purchase orders.

Where the Government's interest demands and will best be served, purchase orders may be cancelled. Ordinarily, orders should be cancelled in writing. In order to maintain good business relations, the vendor should be advised wherever feasible of the necessity for cancellation in advance of formal cancellation and his concurrence obtained. Obtaining concurrence of the vendor will avoid questions of liability. The determination as to whether the public interest requires the cancellation of an order should include consideration of the Government's ultimate responsibility resulting from the cancellation. Cancellation will be generally acceptable to the vendor except where items have been shipped or expense has been incurred such as in special manufacturing or fabrication of items to order. In cases where the vendor will not concur in the cancellation and when it can be established that a contractual relationship exists, the order should be terminated in the same manner as stated in § 4–8.201 for contracts.

§ 4–3.653 Duplicate purchase orders.

If the vendor reports nonreceipt or loss of an original purchase order and requests another copy, there may be issued to him a duplicate copy as his basis of performance. This second issue should be conspicuously marked "DUPLICATE COPY." To avoid the possiblity of a duplicate shipment, a letter of transmittal or a notation on the purchase order should read somewhat as follows:

This is a duplicate copy of lost original purchase order, furnished in accordance with your request of _____ (Date). The Government will not be responsible for duplicate shipment.

§ 4–3.654 Follow-up of purchase orders.

It is the function of the procurement officer to devise and maintain a purchase- order follow-up system in order to assure that delivery is made within the terms of the purchase order. This may be a periodic review of the fiscal obligations file where arranged alphabetically or by setting up a tickler file of purchase orders, arranged according to the date delivery is expected, or any other arrangement that will facilitate periodic follow-up to assure that delivery requirements are met.

§ 4–3.655 Continuing requirements under $2,500 annually.

(a) *General.* Contracts need not be executed when there is a continuing need for supplies or services and it is contemplated that the amount involved in any one case will not exceed $2,500 within the fiscal year, regardless of the number of payments involved. This would apply to certain specific services or supplies of this nature, such as ice, laundry or towel service, rental of equipment, automobile storage, etc. This procedure is authorized by Title 7, Section 4510, GAO Manual. It does not waive statutory advertising requirements.

(b) *Needs requiring written agreement.* Usually, no useful purpose is served either from a procurement or fiscal standpoint by covering such continuing needs with written agreements. There are however, some cases when, to protect the interests of the Government, contracts or agreements for such types of services or supplies should be entered into. For example, it may be advisable to enter into a written agreement for automobile storage or for the rental of equipment in order to define in writing the responsibilities and liabilities of the Government and the vendor in case of loss or damage to either Government or private property. Administrative judgment must therefore be exercised in each case to determine if a written agreement is necessary in the interest of the Government, all factors considered. If such an agreement is considered necessary, Form AD–225 should be used for that purpose and should be numbered and either filed in the General Accounting Office or retained for GAO audit as may be appropriate. In the absence of a written contract or agreement, a purchase order or other equivalent document should be issued when the need for such continuous supplies or services arises and should be available for use in the subsequent audit of operations.

(c) *Form AD–225, Contract for Services.* See § 4–16.850. The form and the general conditions, which are stated on the back thereof, incorporate the main considerations necessary in the negotiation of the majority of these service contracts.

Subpart 4–3.9—Subcontracting Policies and Procedures

§ 4–3.901 General.

(a) *"Anti-Kickback" Act (Subcontractor Gift Law).* The so-called "Anti-Kickback" Act (41 U.S.C. 51–54), also known as the "Subcontractor Gift Law," provides for the recovery from the subcontractor or the recipient of the amount of any fee, kickback, gift or gratuity paid by a subcontractor to any employee or agent of the prime contractor or any higher tier subcontractor as an inducement for or acknowledgment of a subcontract or order, by set-off from any monies owed the subcontractor either directly by the United States or the prime contractor under any negotiated contract. The Act also provides that for the purpose of ascertaining whether such fees, gifts, etc., have been paid or granted by a subcontractor, the General Accounting Office shall have the power to inspect the plants and audit the books and records of any prime contractor or subcontractor in the performance of a negotiated contract. While no contract provision is required, this statute should be considered in the review and administration of negotiated contracts.

Subpart 4–3.50—Negotiated Contracts for Research and Marketing

§ 4–3.5001 Purpose.

It is the purpose of this Subpart 4–3.50 to provide policies and procedures for negotiated contracts under authority of the Act of August 14, 1946, as amended; 7 U.S.C. 427i and 1624.

§ 4–3.5002 Policy.

It is the policy of the Department to negotiate contracts authorized by the Act with qualified public or private organizations or individuals for research and marketing service work where such work can be performed more effectively, more rapidly, or at less cost than if performed by the Department, and use of the regular advertising procedures of these regulations is not feasible.

§ 4–3.5003 Authorities.

(a) *General.* Contracts may be negotiated without regard to statutory advertising requirements, for the purposes stated in Title I and Title II of the Act, which purposes generally include all Agriculture research and marketing service work. Also, where the appropriation is available for research, contracts may be negotiated under the Act to accomplish such research.

(b) *Agency authorities.* Specific agency contracting authorities concerning research and service work and functions relating thereto stated in Chapter 2 of Title I of the Administrative Regulations are to be exercised in conformance with these Procurement Regulations where applicable. All agencies are authorized to use these contract negotiation procedures for accomplishing research and marketing work when the agency has appropriations for such work, the head of the agency or his designee has determined that the work to be performed will be carried out more effectively, more rapidly, or at less cost than if performed by the Department, contracting authority for this specific type of contracting has been delegated pursuant to Subpart 4–1.4, and the necessary approvals required in 1 AR 115a have been obtained.

§ 4–3.5004 Contract negotiation procedures.

Except as otherwise specifically stated in this Subpart 4–3.50. the negotiation procedures of Parts 1–3 and 1–15 shall be followed in negotiating contracts for research and marketing under the Act.

§ 4–3.5005 Contract forms.

The following forms shall be used in connection with the contract types indicated:

(a) Firm fixed-price:

Form AD–263	Research and Services Contract.
Form AD–264	General Provisions.

(b) Cost-reimbursement:

Form AD–263	Research and Services Contract.
Form AD–264	General Provisions.
Form AD–265	Cost-Reimbursement Provisions.
Form AD–267	Contractor's Claim for Reimbursement.

In addition, Form AD–268, Schedule of Salaries and/or Wages Paid, may be used by contractors in conjunction with Form AD–267 as evidence of payments made. No contract general provisions or cost-reimbursement provisions shall be used which conflict with those provided in Forms AD–264 and AD–265, respectively. The contract (Form AD–263) should clearly identify those documents applicable and attached thereto, i.e., Forms AD–264, AD–265, etc. Any other attachments used, such as plan of work, special provisions, etc., should also be clearly identified in the contract.

§ 4–3.5006 Contract period.

In accordance with the Act, the contract time may not exceed four years. The contract period should be inserted in the Contract Form AD–263.

§ 4–3.5007 Contract floor.

The annual Appropriation Act for the Department requires that not less than a set amount of the total appropriation shall be available for contracting in accordance with the Act. This "contract floor" is allocated by the Office of Budget and Finance on recommendations of the Agricultural Research Service based upon project estimates of the agencies.

§ 4–3.5008 Publication.

See 3 AR 200–206 concerning publication of results obtained under RMA contracts.

PART 4–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 4–4.6—Livestock Products

Sec.
4–4.607 Reporting violations.

Subpart 4–4.50—General

4–4.5000 Scope.
4–4.5001 Aerial photography.
4–4.5002 Air conditioning equipment.
4–4.5003 Air operations service.
4–4.5004 Aircraft (aerial) facilities and services (Forest Service only).
4–4.5005 Aircraft purchase, maintenance, and operation.
4–4.5006 Alcohol and distilled spirits.
4–4.5007 Architectural or engineering services.
4–4.5008 Arms and ammunition.
4–4.5009 Arts and graphics.
4–4.5010 Automatic data processing equipment.
4–4.5011 Badges.
4–4.5012 Calendars.
4–4.5013 Calling or greeting cards.
4–4.5014 Coal.
4–4.5015 Collection of data from the public.
4–4.5016 Commissary operations.
4–4.5017 Concessions.
4–4.5018 Construction on land not owned by the U.S. (Forest Service).
4–4.5019 Control of insect pests and diseases.
4–4.5019–1 Protection of forest lands.
4–4.5019–2 Cooperative programs of control.
4–4.5020 Control of Mexican foot-and-mouth disease.
4–4.5021 Copying machines and supplies.
4–4.5022 Credit ratings.
4–4.5023 Cultures for soil and fertilizer investigations.
4–4.5024 Desks, conference types.
4–4.5025 Detective agency services.
4–4.5026 Duplicating equipment.
4–4.5027 Employees—purchase from.
4–4.5028 Employee death expenses.
4–4.5029 Employees engaged in hazardous work—medical care of.
4–4.5030 Employees' graves.
4–4.5031 Engineering services.
4–4.5032 Envelopes.
4–4.5033 Exchange—sale in purchasing.
4–4.5034 Exhibits.
4–4.5035 Experimental, developmental, and testing requirements (Forest Service).
4–4.5036 Explosives.
4–4.5037 Extravagant purchases.
4–4.5038 [Reserved]
4–4.5039 Film processing mailers.
4–4.5040 4–H Club assemblages.
4–4.5041 Fuel oil.
4–4.5042 Furniture and furnishings.
4–4.5043 Furniture and furnishings for executive offices.
4–4.5044 Furnishings for personnel quarters.
4–4.5045 Gasoline, fuel oil, kerosene, and solvents.
4–4.5046 Gasoline and other items from service stations.
4–4.5047 GAS controlled space, services and facilities.
4–4.5048 Installment purchasing.
4–4.5049 Insurance.
4–4.5050 Interest.
4–4.5051 Kerosene.
4–4.5052 Livestock products.
4–4.5053 License plates for motor vehicles.
4–4.5054 Managing and operating contracts.
4–4.5055 Meat inspection tags, labels, etc.
4–4.5056 Membership fees.
4–4.5057 Men with equipment.
4–4.5058 Motion pictures.
4–4.5059 Motor vehicles.
4–4.5060 Motor vehicle statutory purchasing limitations.
4–4.5061 Motor vehicle tags, shields, and other identification.
4–4.5062 National defense contracting.
4–4.5063 Nursery stock.
4–4.5064 Oil, lubricating.
4–4.5065 Paper and paperboard.
4–4.5066 Personal articles.
4–4.5067 Personal interest in purchases.
4–4.5068 Procurement of personal services.
4–4.5069 Photography.
4–4.5070 Post office box rental.
4–4.5071 Printing and binding.
4–4.5072 Printing equipment.
4–4.5073 Property forfeited and/or abandoned.
4–4.5074 Public utility services.
4–4.5075 Publications.
4–4.5076 Purchasing officer interest in employee purchasing association activities.
4–4.5077 Radiation equipment and radioactive material.
4–4.5078 Recreational equipment.
4–4.5079 Refrigerators.
4–4.5080 Rental of equipment.
4–4.5081 Rental of equipment from Forest Service.
4–4.5083 Returnable containers.
4–4.5084 Rugs.
4–4.5085 Serums.
4–4.5086 Sidewalks, curbs, or street paving.
4–4.5087 Solvents.
4–4.5088 Space studies, layouts, and interior design.
4–4.5089 Standard forms and blankbook work.
4–4.5090 Stenographic reporting.
4–4.5091 Telephones in private residences (Forest Service only).
4–4.5092 Trading stamps, redeemable coupons, etc.
4–4.5093 Training services.
4–4.5094 Tree seed, cones, and nursery stock (Forest Service only).
4–4.5095 Tuberculin, serums, antitoxins, etc.
4–4.5096 Twine.
4–4.5097 Typewriters.
4–4.5098 Used or reconditioned equipment.
4–4.5099 Visual services.
4–4.5099a Water coolers.
4–4.5099b Year-end purchasing.

Subpart 4–4.52—Exchange or sale of Personal Property and Application of Exchange Allowances or Proceeds of Sale to Purchase of Similar Items

4–4.5200 Scope.
4–4.5201 Policy.
4–4.5202 Authority.
4–4.5203 Definitions.
4–4.5204 Use of GSA sales facilities.
4–4.5205 Sale requirements.
4–4.5206 Advertising for bids.
4–4.5207 Open-market (negotiated) disposals.
4–4.5208 Exchange allowances and cash offers.
4–4.5209 Similarity of items or exchange/sale purposes.
4–4.5210 Exchange or sale of more than one item.
4–4.5211 Application of exchange allowance and proceeds of sales.
4–4.5212 Availability of proceeds of sales.
4–4.5213 Limitations.
4–4.5214 Exceptions.
4–4.5215 Records.
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Subpart 4–4.53—Procurement of Construction

4–4.5300 Scope of subpart.
4–4.5301 Invitation for bids.
4–4.5301–1 Forms.
4–4.5301–2 Bid guarantee.
4–4.5301–3 Specifications.
4–4.5301–4 Plans and drawings.
4–4.5301–5 Schedule of items.
4–4.5301–6 Special conditions.
4–4.5301–7 Liquidated damages.
4–4.5301–8 Rates of wages.
4–4.5301–9 Nonrebate of wages—Copeland Act.
4–4.5301–10 Contract Work Hours Standards Act.
4–4.5301–11 Buy American Act.
4–4.5301–12 Price adjustment for suspension, delay, or interruption of work.
4–4.5302 Selection of bidders.
4–4.5303 Time allowed for submission of bids.
4–4.5304 Deposit or payment for plans, drawings, and specifications.
4–4.5305 Notices to prospective bidders.
4–4.5306 Receiving and opening bids.
4–4.5307 Analyses of bids.
4–4.5308 Preparation of Standard Form 19.
4–4.5309 Preparation of Standard Form 23.
4–4.5310 Notice of contract award.
4–4.5311 Performance and payment bonds.
4–4.5312 Notice to proceed.
4–4.5313 Changes in construction contracts.
4–4.5314 Changed conditions in construction contracts.
4–4.5315 Work orders.
4–4.5316 Amendment.
4–4.5317 Equitable adjustment.
4–4.5318 Work progress reports and invoices.
4–4.5319 Extension of contract time.

AUTHORITY: The provisions of this Part 4–4 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–4.6—Livestock Products

§ 4–4.607 Reporting violations.

Reports of possible violations of Statements of Eligibility given in accordance with § 1–4.604 shall be made to the Office of Plant and Operations for necessary action.

Subpart 4–4.50—General

§ 4–4.5000 Scope.

This subpart sets forth the various restrictions, authorities, and regulations applicable to the Department of Agriculture for all special types and methods of procurement, except exchange-sale and construction which subjects are covered in Subparts 4–4.52 and 4–4.53.

§ 4–4.5001 Aerial photography.

Aerial photographic projects shall be cleared with the Aerial Photography Division, Agricultural Stabilization and Conservation Service, in accordance with Secretary's Memorandum No. 1347, Revised. See Subpart 4–16.50 for forms to be used for contracts for this service.

§ 4–4.5002 Air conditioning equipment.

Unless specifically provided by an appropriation or other law, all air conditioning equipment for use in Government-owned or leased buildings (including post offices) operated by the Administrator of General Services, except as provided in this § 4–4.5002, must be purchased and installed by payment from funds appropriated to the General Services Administration. (See Comp. Gen. Decision B–123988 dated July 27, 1955; Exhibit 8, Appendix C, GSA Reg. 2–II–304.04.) These restrictions do not apply to purchases by the Department of the following:

(a) Ventilating and temperature and humidity control equipment for special laboratory, scientific, and research purposes, the cost of the purchase and installation of which may be borne from the appropriations of the particular agency utilizing such equipment, but such installations shall be subject to approval by the General Services Administration.

(b) Equipment for installation in buildings operated by GSA for which services are furnished on a reimbursable basis, provided funds therefor are available to the agencies occupying the buildings.

§ 4–4.5003 Air operations service.

(a) *Purpose.* This section prescribes the procuring documents to be used in obtaining aircraft and air operations service on a charter basis, for transportation of persons or property, surveys, observations, reseeding operations, etc., where exclusive use of the aircraft is required.

(b) *Authority.* Agreement between Department officials and officials of the Transportation Division, General Accounting Office, March 17, 1959.

(c) *Contracts for service.* Agency contracts for air operations service, whether by formal advertising or by negotiation shall specify the procuring document to be used, i.e., Transportation Request, Government Bill of Lading, or Purchase Order. Generally, the procuring document applicable to the service involved, that is, freight or passenger, should be used. However, if the primary purpose of the flight is the movement of equipment or supplies and the personnel involved are incidental to the main purpose, and the same overall charge is involved, a Government Bill of Lading should be issued to cover the entire service. Conversely, if the main purpose of the flight is the movement of personnel, such as fire fighting crews, and the equipment and supplies involved are incidental, with charges overall the same, a Transportation Request should be used. Where the service performed is not generally defined as passenger or freight carriage between specific points, such as reconnaissance flights, reseeding operations, etc., and payment is made on a per unit basis, such as hour or acre, a Purchase Order may be used in lieu of a Transportation Request or Government Bill of Lading.

(d) *Continuing service.* Individual procuring documents, i.e., Transportation Request, Government Bill of Lading, or Purchase Order, are not required for each movement or type of service performed. One appropriate document may be issued to cover a given period of service, provided the carrier's invoice particularizes as to how the various charges were established, and includes flight logs or other documentary proof that may be necessary to show that the services were actually performed.

(e) *Emergency service.* Transportation services required in emergency situations, including the use of small aircraft operators not under contract arrangements, shall be procured as follows: At the time such services are requested, an inquiry should be made as to whether the carrier or individual operator files tariffs with either a Federal or State regulatory body covering rates and charges. In the event such tariffs are filed, Transportation Requests or Government Bills

of Lading, as appropriate, should, where feasible, be used to procure the services required. If the carrier or individual is not required to file a tariff or schedule of rates with a regulatory body, purchase orders may be used to procure the services required.

§ 4–4.5004 Aircraft (aerial) facilities and services (Forest Service only).

Under the provisions of 16 U.S.C. 579a, the Forest Service is authorized by contract or otherwise, to provide for the procurement and operation of aerial facilities and services for the protection and management of national forests, with authority to renew any contract for such purposes annually, not more than twice, without additional advertising.

§ 4–4.5005 Aircraft purchase, maintenance, and operation.

(a) *Authority.* Under the provisions of 5 U.S.C. 78, no appropriated money may be expended for the purchase, maintenance, or operation of airplanes unless there is specific authority in the appropriation for such purchase, maintenance, or operation. (See 6 AR 356 and 5 AR 623 for information on the transfer of airplanes.)

(b) *Rental.* Under the limitations of 5 U.S.C. 78, specific statutory authority for the "maintenance and operation" of airplanes is required to cover the rental of airplanes under term contract or otherwise. This is not construed, however, to apply to the procurement of airplane service where the contractor or vendor furnishes the airplane, a pilot, gasoline and oil, and otherwise maintains and operates the airplane.

§ 4–4.5006 Alcohol and distilled spirits.

(a) *Alcohol.* There have been issued to the Department of Agriculture by the Deputy Commissioner of Internal Revenue numerous Treasury Department permits which authorize purchases by the various agencies of the Department of tax-free ethyl alcohol, and distilled spirits of 160 degrees or more of proof, from bonded warehouses, and specially denatured alcohol from denaturing plants or bonded dealers' storerooms. The original of the permit is forwarded to the proprietor of the warehouse, plant or storeroom, as the case may be, and a copy is retained in the Office of Plant and Operations.

(1) *Method of acquisition.* Orders should be placed upon the proprietors of the bonded warehouses, denaturing plants, or bonded dealers' storerooms, and each order should bear reference to the permit number. A copy of each order should be forwarded to the Government officer in charge of and located at the bonded warehouse, denaturing plant or bonded dealer's storeroom, from which the alcohol or distilled spirits is to be procured. This will enable the officer to determine that the shipment is proper and that the alcohol or distilled spirits may be released without the payment of taxes.

(2) *Lists of permits.* The permits are effective until superseded or cancelled. They have been issued on warehouses, plants or storerooms located in various sections of the country. Alcohol or distilled spirits should be purchased from such sources when practicable. The list follows:

ETHYL ALCOHOL PERMITS

Proprietor and location	*Permit number*
CALIFORNIA	
Commercial Solvents Corp., Agnew	US–TF–226
U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Anaheim	US–TF–234
Shell Chemical Corp., Culver City	US–TF–233
HAWAII	
California Packing Co., Honolulu	US–TF–223
ILLINOIS	
Commercial Solvents Corp., Chicago	US–TF–227
U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Tuscola	US–TF–235
INDIANA	
Commercial Solvents Corp., Terre Haute	US–TF–228
LOUISIANA	
U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., New Orleans	US–TF–237
Commercial Solvents Corp., Harvey	US–TF–229
MASSACHUSETTS	
U.S. Industrial Chemical Co., Division of National Distillers and Chemical Corp., 150 Causeway Street, Boston, Mass., Boston	US–TF–343
MICHIGAN	
Commercial Solvents Corp., Detroit	US–TF–230
NEW JERSEY	
Commercial Solvents Corp., Newark	US–TF–231
U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Newark	US–TF–236
OHIO	
Commercial Solvents Corp., Cincinnati	US–TF–232
PENNSYLVANIA	
Publicker Industries, Inc., Philadelphia	US–TF–238
WEST VIRGINIA	
Union Carbide Chemicals Co., Division of Union Carbide Corp., South Charleston	US–TF–225

DISTILLED SPIRITS

ILLINOIS	
Hiram Walker & Sons, Inc., Peoria	US–SDS–160
SPECIALLY DENATURED ALCOHOL PERMITS	
CALIFORNIA	
U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Anaheim	US–SDS–200
LOUISIANA	
U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., New Orleans	US–SDS–159
MARYLAND	
The Warner-Graham Co., Baltimore	US–SDS–161
PENNSYLVANIA	
Publicker Industries, Inc., Philadelphia	US–SDS–158

(3) *Purchase from warehouse, plant, or storeroom not holding a permit.* If it becomes necessary to purchase alcohol or distilled spirits from a bonded warehouse, denaturing plant, or bonded dealer's storeroom not holding a permit in favor of the Department, the location of the warehouse, plant, or storeroom and the name and address of the proprietor should be furnished the Office of Plant and Operations in order that a permit may be obtained.

(4) *Special permit.* The Northern Utilization Research and Development Division of the Agricultural Research Service, located at Peoria, Illinois, holds permit No. US–TF–222, which enables it to ship alcohol free of tax to the Western, Eastern, and Southern Utilization Research and Development Divisions. It may not be used by other agencies of the Department to obtain alcohol.

(b) *Forfeited distilled spirits.* See 5 AR 632.8 for transfer of forfeited distilled spirits.

§ 4–4.5007 Architectural or engineering services.

The contract price for architectural or engineering services, such as the production of design, plans, drawings, and specifications for the project, cannot exceed 6 percent of the estimated cost of construction of the project. This limitation (see § 1–3.404) is established by the Federal Property and Administrative Services Act, Section 304(b), which states:

> * * * and that a fee inclusive of the contractor's costs and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the agency head at the time of entering into the contract for the project to which such fee is applicable, is authorized in contracts for architectural or engineering services to any public works or utility project * * *

The "project to which such fee is applicable" has been defined by the Comptroller General in his Decision B–143899 of September 26, 1960, as:

> The project for which the architect-engineer undertakes in his contract to prepare the plans, etc., and not any larger budgetary or other project of which it may form a part. To hold otherwise would allow the architect-engineer's fee to be based on the cost of work for which he rendered no service.

Such professional services exclude preliminary site work such as field surveys, subsurface investigations, etc. If these preliminary services are included in the contract price, the contracting officer shall determine the value thereof and exclude this amount in computing whether the contract is within the above 6 percent limitation. The contract file shall include documentation of such determinations. See also § 1–3.204(b) for additional limitations.

§ 4–4.5008 Arms and ammunition.

(a) *Purchase from funds available for field work.* The Act of June 4, 1936 (5 U.S.C. 542b), gives the Department

specific authority to use funds available for its field work for the purchase of arms and ammunition whenever (1) the individual purchase does not exceed $50, and (2) for individual purchases exceeding $50, when such items cannot advantageously be supplied on a loan basis in accordance with the procedures outlined in subparagraph b below. If circumstances warrant, purchases may be made from the Department of the Army pursuant to the authority for purchases from other Government agencies under section 601 of the Economy Act, as outlined in Subpart 4–5.58. Arrangements for such purchases may be made directly with the military installation. Otherwise, purchases of arms and ammunition will be made in accordance with the rules governing purchases in general.

(b) *Loans from the Department of the Army for Protection of Public Money and Property.* By the act of August 10, 1956, as amended (10 U.S.C. 4655), the Secretary of the Army is authorized to supply Government agencies with arms, suitable accouterments for use therewith, and ammunition, whenever they may be required for the protection of public money and property, such items to be accounted for to the Secretary of the Army and returned when the necessity for their use has expired. A transfer of funds from the requisitioning agency to the credit of the funds of the Department of the Army shall be made of costs to that agency of all ammunition issued; replacing borrowed arms and accouterments which are lost or destroyed or are irreplaceable; repairing arms and accouterments returned; and making and receiving shipments.

(1) *Clearance for procurement of nonmilitary items.* The Department of the Army, by letter to the General Services Administration (GSA Circular No. 84, of April 5, 1954) has granted a general clearance, under the statute cited above, for agencies to procure, without further reference to or clearance by that Department, all arms and ammunition of types which are not peculiar to the military services, and which are readily procurable in the civilian market.

(2) *Requests for loans.* When it is anticipated that an individual procurement of arms and ammunition of the types peculiar to the military service would cost in excess of $50, the Director of Materiel Readiness, Headquarters, Army Materiel Command, Department of Defense should be requested by letter, for signature of the Director of Plant and Operations, to furnish them as provided in this § 4–4.5008. The request should itemize the articles required, explain the use to be made of them, and give the name and official title of the person to whom delivery should be made. The request shall be sent to the Office of Plant and Operations for review, signature, and forwarding, since that Office is responsible for accounting for such items on loan to the Department.

§ 4–4.5009 Arts and graphics.

See "Visual services," § 4–4.5099.

§ 4–4.5010 Automatic data processing equipment.

Bureau of the Budget Bulletin 60–6 sets forth guidelines for studies to precede the utilization of ADP equipment. In circular letters both numbered B–115369 dated September 18, 1957 and January 14, 1959, the Comptroller General provides for GAO review of agency utilization studies. Any proposed rental or purchase of this equipment must be cleared in advance with the Office of Management Appraisal and Systems Development, except where exemptions for small rental transactions have been granted to individual agencies by that office. Subject to these restrictions, automatic data processing equipment may be purchased in accordance with the applicable purchasing policies and procedures in this Title.

Agencies may purchase from their appropriations such badges as are necessary to meet their requirements, but before placing any order for dies, a drawing of the proposed badge shall be submitted for approval to the Director of Plant and Operations, together with specifications describing material, size, shape and insignia. (See 1 AR 952.)

§ 4–4.5012 Calendars.

In accordance with the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States, only standardized Government desk and wall calendars may be obtained at Government expense. Standardized wall calendars are those printed by the Government Printing Office. Standardized desk calendars are those covered by Federal Standard 80d. Schedule and Appointment sheets are not considered to be calendars. Order calendars for Washington, D.C. delivery from Central Supply; otherwise from GSA Stores.

§ 4–4.5013 Calling or greeting cards.

The Government Printing and Binding Regulations, published by the Joint Committee on Printing, Congress of the United States, provide that printing of calling or greeting cards is considered to be personal rather than official and shall not be done at Government expense.

(a) *Requirements for use in the District of Columbia and vicinity.* The General Services Administration maintains and operates a Fuel Yard in Washington, D.C. for delivery to Federal agencies of their requirements of solid and liquid heating fuels. All agencies located in the District of Columbia or within approximately 25 miles of the District of Columbia are required to procure their fuel requirements from the Fuel Yard. Details of this service may be obtained from the General Services Administration, Federal Supply Service, Region 3, 7th and D Streets SW., Washington, D.C.

(b) *Carload requirements for field use.* Certain regional offices of the General Services Administration contract for consolidated coal requirements for carload delivery to Federal agencies outside the District of Columbia and vicinity. Agencies of the Department may participate in those contracts by submitting annually estimates of their requirements. After contracts are awarded, each participating agency will be furnished with the necessary contractual information by letter and, as shipments are required, will direct the contractor to make delivery. Payment for deliveries will be made by the ordering agency directly to the contractor. Agencies submitting requirements which are subsequently contracted for by the General Services Administration will be obligated to procure the type of coal under such contracts, but only to the extent deliveries are required. However, agencies should notify the contractor as soon as possible in case the estimated requirements will not be needed due to changes or reconversions in heating equipment, or other reasons.

(1) *Submission of requirements.* Estimates of requirements for delivery during the period July 1, through June 30 of each year shall be prepared on GSA Form 222, Estimated Requirements for Coal. Submit in original only to the appropriate General Services Administration regional offices as set forth below, so as to arrive on or before January 15. A separate requirement form should be prepared for each kind and size of coal required for each delivery point. Copies of GSA Form 222 may be obtained from the General Services Administration regional offices listed below, or facsimiles of the form may be submitted.

(2) *Inspection and testing of coal deliveries.* GSA Regulation 1–VI–401.02 requires that each agency procuring material shall inspect or arrange for the inspection thereof. Accordingly, each agency should take coal samples, for analysis purposes, in accordance with the methods set forth in the latest revision of the Handbook on Coal Sampling issued by the Department of the Interior, Bureau of Mines. (Copies of the handbook may be obtained from the Bureau of Mines, Fuel Inspection Section, 4800 Forbes Street, Pittsburgh, Pa. Coal samples should be forwarded to the laboratory of the Bureau of Mines at the same address for analysis. A charge of $5.00 for each sample submitted will be assessed for performing such analysis. Agencies should therefore furnish the Bureau of Mines with complete billing instructions at the time samples are submitted. Copies of the results of each analysis will be furnished by the Bureau of Mines to the General Services Administration for comparison with the analytical limits guaranteed by the contractor, and, after comparison, a copy of the analysis will be forwarded by GSA to the agency concerned. In the event that the sample does not meet the minimum requirements of the analytical limits specified in the contract, GSA will compute the amount, if any, to be deducted from the contract price and will furnish this information to the using agency, together with the analysis report.

(3) *Names and addresses of procuring offices and States assigned.*

Procuring office and address	*For delivery within the following States*
General Services Administration, Federal Supply Service, Region 3, 7th and D Streets SW., Washington 25, D.C.	Alabama, Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.
General Services Administration, Federal Supply Service, Region 5, 219 South Clark Street, Chicago 4, Ill.	Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin.
General Services Administration, Federal Supply Service, Region 6, 911 Walnut Street, Kansas City 6, Mo.	Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas.
General Services Administration, Federal Supply Service, Region 8, Denver Federal Center, Denver 1, Colo.	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

§ 4–4.5015 Collection of data from the public.

Where identical data is to be collected from the public from ten or more persons (other than Federal employees), contract provisions including plans, forms and reporting requirements, shall be forwarded in accordance with 1 AR 561 through the Department Statistical Clearance Office for approval by the Bureau of the Budget. Contracts should include an appropriate provision for such clearance.

§ 4–4.5016 Commissary operations.

(a) *By Forest Service.* The Forest Service is authorized to purchase supplies and equipment, or merchandise for its employees on a commissary basis under the provisions of the Act of March 3, 1925 (16 U.S.C. 557). It is the policy, however, to prohibit the use of this commissary authority by employees of the Washington office, regional offices, forest supervisor's offices, and district ranger personnel with the exception of personnel located at field stations and camps and remote country towns and other isolated locations where commercial purchasing facilities are inadequate or lacking.

(b) *In Alaska.* Pursuant to statutory provisions (5 U.S.C. 543a), agencies of the Department are authorized to purchase supplies and equipment for their employees in Alaska on a commissary basis. It is the policy, however, to restrict the use of this authority to locations where commercial purchasing facilities are inadequate or lacking.

§ 4–4.5017 Concessions.

4 AR 88 outlines the policy and procedure established for the granting of concessions for the furnishing of commodities and services to employees while on duty, which are essential for their health, comfort, or efficiency, and which cannot be obtained conveniently from nearby existing facilities.

§ 4–4.5018 Construction on land not owned by the U.S. (Forest Service).

The Forest Service is authorized to erect permanent facilities on land not owned by the United States, provided, that prior to such erection there be obtained the right to use the land for the estimated life of or need for the structure, including the right to remove any structure erected after the termination of the right to use the land. (16 U.S.C. 571c)

§ 4–4.5019 Control of insect pests and diseases.

§ 4–4.5019–1 Protection of forest lands.

In accordance with statutory provisions (16 U.S.C. 594–1 to 594–5), materials and equipment (including printing and binding and the purchase, maintenance, operation, and exchange of passenger-carrying vehicles), required for the protection of forest lands from insects and diseases, may be procured without advertising. However, the policies and procedures governing procurement in FPR and AGPR shall be applicable to such functions, insofar as feasible, consistent with efficient operations.

§ 4–4.5019–2 Cooperative programs of control.

Procurements of materials and equipment in connection with cooperative programs with authorities of the states, concerned, organizations, or individuals for the control of incipient or emergency outbreaks of insect pests or plant diseases, including grasshoppers, Mormon crickets, and chinch bugs, under authority of 7 U.S.C. 148–148e, may be made from appropriate funds without advertising, and the transportation thereof may be under such conditions and means as shall be determined by the Secretary to be most advantageous. (See 41 U.S.C. 6b(a).) However, the policies and procedures governing procurement in FPR and AGPR shall be applicable to such functions, insofar as feasible, consistent with efficient operations.

§ 4–4.5020 Control of Mexican foot-and-mouth disease.

Funds available for the control and eradication of foot-and-mouth disease and rinderpest in Mexico may also be used for the purchase or hire of passenger motor vehicles and aircraft, for printing and binding without regard to the provisions of 44 U.S.C. 111 requiring that such work be done at the Government Printing Office, and for the construction and operation of research laboratories, quarantine stations, and other buildings and facilities. However, the policies and procedures in FPR and AGPR governing procurements generally shall be applicable in making purchases for this program unless otherwise specifically authorized by the Secretary. (21 U.S.C. 114 b and c.)

§ 4–4.5021 Copying machines and supplies.

Proposed acquisitions of office-type copying machines, the purchase price or annual rental cost of which exceeds $350, shall be submitted to the Office of Plant and Operations for approval. Proposals shall state in addition to make, model, and cost, the type, variety and maximum size of documents to be copied, the approximate total copies to be made annually, and the basis for determining such quantity, the number and make of copying machines on hand, if any, and the use or disposition to be made of them, and efforts made to share copying facilities of own and other agency offices.

(a) *Diffusion transfer (wet photographic) process.* Only available lowest cost paper and compatible chemicals shall be purchased.

(b) *Electrostatic (dry) process.* Only long grain paper meeting the requirements of Federal Specifications UU–P–221j, Type III (25 percent Rag Bond), and Type IV (Chemical Wood Bond) shall be used on Xerox Electrostatic Copying Machines, Models 813 and 914. These are available through GSA or GPO. The following items furnished by GSA are representative of the two types of papers:

7530–233–0674 Type III, 25 percent Rag, Size 8x10½.
7530–241–0660 Chemical Wood, Size 8x10½.

§ 4–4.5022 Credit ratings.

(a) *Information available.* Bound volumes of the published reports by Dun and Bradstreet are available in the National Agricultural Library. Individual credit rating reports may be secured from Dun and Bradstreet, Incorporated, through the Office of Management Services, Division of Administrative Services, Procurement and Property Branch (P&P).

(b) *Procedure for requesting individual reports.* Requests for individual credit rating reports should be submitted, in writing, through agency headquarters to the Office of Management Services, Division of Administrative Services, P&P. Agencies will be billed for the reports furnished at the price charged by Dun and Bradstreet plus a a handling charge.

§ 4–4.5023 Cultures for soil and fertilizer investigations.

Purchases of cultures for use in connection with soil and fertilizer investigations may be made without advertising (7 U.S.C. 432) from applicable appropriations.

§ 4–4.5024 Desks, conference types.

Such desks shall be acquired only for use in:

(a) Executive offices as defined in § 4–4.5043, or

(b) Offices assigned for the exclusive use of one official where use of this type desk is determined to be the most efficient.

§ 4–4.5025 Detective agency services.

The Act of March 3, 1893, 5 U.S.C. 53, prohibits the use of services of any detective agency. This prohibition extends to contracts or agreements with detective agencies and with individual employees of such agencies, regardless of the character of service to be performed, even though the service is not of a detective

or investigative nature. (See 38 C.G. 881.)

(a) *Definition.* For the purposes of this section, office-type duplicating and related equipment consists of duplicating machines and related equipment used for "duplicating" as defined in the Government Printing and Binding Regulations.

(b) *Acquisition approval.* Proposed requisitions of office-type duplicating machines and related equipment, including replacements, shall be approved by the appropriate agency property management officer as provided in 5 AR 609.9. Proposed acquisitions of such equipment for use in an authorized printing plant must also be submitted for approval by the Joint Committee on Printing in accordance with § 4–4.5011c. In addition, acquisition of all power-operated collating machines, even when not classified as printing and binding equipment, must be approved in advance by the Office of Information, as required by Information Memorandum No. 19.

(c) *Restrictions.* Duplicating machines using the offset or stencil process and related equipment shall not be acquired for use in Washington, D.C., except upon the prior approval of the Director of Plant and Operations. (See 4 AR 907.)

§ 4–4.5027 Employees—purchase from.

(a) *Policy.* Contracts between the Government and its employees are not prohibited generally by statute, but only where an employee acts as an agent both for the Government and the contractor in the transaction of business (see 18 U.S.C. 208) or where the services to be rendered under a contract with an employee is such as could have been required of him in his official capacity (see 5 U.S.C. 69, 70). However, aside from any statutory prohibition, contracts between the Government and its employees are open to criticism for possible favoritism and preferential treatment and should not, therefore, be made except for the most cogent reasons and under no circumstances where the needs of the Government reasonably can be otherwise supplied. The hire or rental of equipment from employees is generally prohibited. The relationship of landlord and tenant between the Government and its employees may be created only when the conditions enumerated in 4 AR 44 are met.

(b) *Approval.* Purchases from Government employees shall be approved in writing by the agency head or his designee for this purpose.

(c) *Exceptions.* The Forest Service may hire or rent property from its employees for use by other than the employee from whom hired or rented, in accordance with 16 U.S.C. 502.

§ 4–4.5028 Employee death expenses.

Certain expenses in connection with the death of employees in travel status, or on foreign assignment, including deceased dependents, are allowable. See 7 AR 588–593 for the expenses allowable and the circumstances under which such expenses can be paid.

§ 4–4.5029 Employees engaged in hazardous work—medical care of.

Appropriations for the Forest Service shall be available for medical supplies and services, and other assistance necessary for the immediate relief of artisans, laborers, and other employees engaged in any hazardous work under the Forest Service, and for expenses of notifying employees of the death or serious illness of close relatives and, in such cases where no public transportation is available, for transporting the employees to a point where public transportation is available.

§ 4–4.5030 Employees' graves—care of.

Appropriations of the Forest Service are available pursuant to (16 U.S.C. 554c), within such limitations as may be prescribed therein, for the expense of properly caring for the graves of persons who have lost their lives as the result of firefighting while employed by the Forest Service.

§ 4–4.5031 Engineering services.

See § 4–4.5007.

§ 4–4.5032 Envelopes.

(a) *Authority.* The Act of June 26, 1906, as amended (39 U.S.C. 355), directs the Postmaster General to contract for all envelopes required by the executive departments and independent establishments of the Government subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended. In conformance with section 201(a) of the above Act, the responsibility for contracting and related functions with respect to plain and printed envelopes was transferred from the Post Office Department to the General Services Administration effective July 1, 1954.

(b) *Types of envelopes.* General Services Administration periodically enters into Federal Supply Schedule contracts covering numerous sizes and types of plain and printed envelopes for use by the departments and independent agencies of the Government and will contract for interim needs as required. Agency requirements should be limited to these standard sizes and types unless exceptions therefrom are granted by General Services Administration as provided in § 4–4.5032(d).

(c) *Method of acquisition.* Purchases of envelopes covered by Federal Supply Schedule contracts are to be made in the same manner as other Schedule purchases. Agencies in Washington, D.C. are to obtain the following envelopes as indicated:

(1) Standard common use envelopes will be ordered from Central Supply Section stocks.

(2) Plain envelopes not stocked by the Central Supply Section will be ordered, as available, in the following sequence:

(i) From the Government Printing Office, if listed in their catalogue (44 U.S.C. 225).

(ii) From the Federal Supply Schedule in accordance with provisions of mandatory use and minimum ordering quantities contained therein.

(iii) If not available under paragraph (a) or (b) of this section, they may be purchased in the open market.

(d) *Special envelopes.* Requirements in excess of $2,500.00 for envelopes not included in the Federal Supply Schedule are to be forwarded to the General Services Administration in accordance with the instruction in the Federal Supply Schedule.

(e) *Printing on envelopes.* The printing of agency identification, postage and fees paid indicia or penalty clause, whichever is applicable, and "official business" shall be in black or blue ink. The printing of borders, markings, slogans or designs may be included only upon special justification approved by the Bureau of the Budget in accordance with Budget Bureau Circular A–33, Revised. Such special printing requests shall be forwarded to the Bureau of the Budget through the Office of Plant and Operations.

§ 4–4.5033 Exchange—sale in purchasing.

See Subpart 4–4.52.

§ 4–4.5034 Exhibits.

See § 4–4.5099, Visual services.

§ 4–4.5035 Experimental, developmental, and testing requirements (Forest Service).

Advertising is not required for purchases by the Forest Service of (a) material to be tested or upon which experiments are to be made or (b) special devices, test models, or parts thereof, to be used (1) for experimentation to determine their suitability for or adaptability to accomplishment of the work for which designed, or (2) in the designing or developing of new equipment, provided that not to exceed $50,000 may be expended in any one fiscal year, and not to exceed $10,000 on any one item of purchase. (16 U.S.C. 580c.)

§ 4–4.5036 Explosives.

In time of war or national emergency, the manufacture, sale, purchase, distribution, storage, use, and handling of certain explosives and explosive ingredi ents are governed by Federal regulations issued by the Director of the Bureau of Mines pursuant to the Federal Explosives Act, as amended by the Act of December 26, 1949 (50 U.S.C. 122, 142). Although these Federal regulations apply only in time of war of national emergency, in most States there are state and local laws and regulations governing the purchase, sale, etc., of such explosives, and agencies of the Department should be governed by the requirements of the States in which they are located.

§ 4–4.5037 Extravagant purchases.

Only such equipment, supplies, or materials as acceptably and economically serve the needs of the Government should be purchased. Purchases of "fancy" or "deluxe" items are not permitted when the requirements of the service can be satisfactorily met by a standard article at less expense. Failure of a procurement officer to observe these restrictions may result in the disallowance of the covering voucher and necessitate his personal assumption of the indebtedness.

§ 4–4.5039 Film processing mailers.

The purchase of film processing mailers at a price which includes the cost of processing the film is prohibited. Such purchases amount to payments for photographic processing prior to receipt of the service and as such involves advance payments in violation of 31 U.S.C. 529. (See Comp. Gen. Decision B–138729, 4–10–59.)

§ 4–4.5040 4–H Club assemblages.

As provided by law (31 U.S.C. 552), funds may be expended to meet expenses necessary for assemblages of 4–H Clubs, called in the District of Columbia or elsewhere, in furtherance of the cooperative extension work of the Department.

§ 4–4.5041 Fuel oil.

See Gasoline § 4–4.5045.

§ 4–4.5042 Furniture and furnishings.

(a) *General.* This section prescribes the methods to be used by Federal agencies in obtaining furniture pursuant to the provisions of Section 1316 of the Supplemental Appropriation Act of 1954 (Public Law 207, 83rd Congress, 40 U.S.C. 483b), and sets forth the determination of the Administrator made pursuant thereto. It also prescribes the procedure to be used in obtaining their requirements, in the continental United States (except Alaska) of new household and quarters furniture, covered by the consolidated purchase program of the Administration.

(b) *Furniture classifications.* For purposes of this section, the applicable classifications and definitions of furniture are:

(1) *Office furniture.* Includes wood and metal furniture normally used in a business office, including executive-type office furniture and furnishings, such as, but not limited to, desks, tables, telephone stands, filing sections, office safes and security cabinets, upholstered leather chairs and davenports, desk trays, waste receptacles, visible record cabinets, vertical-type filing cabinets, folding and tablet armchairs, and folding tables, but excludes such items as desk lamps, rugs, typewriters, office machines, workbenches, and electric accounting machines and components.

(2) *Household and quarters furniture.* Includes furniture normally used in housekeeping and nonhousekeeping quarters, libraries, dens, and reception rooms such as, but not limited to, armchairs, sofas, side chairs, buffets, dining tables, kitchen tables, occasional tables, mirrors, occasional chairs, porch chairs, vanities, wardrobes, and night tables.

(3) *Hospital furniture.* Includes items such as, but not limited to, beds (both adjustable and nonadjustable), overbed tables, bedside tables (cabinet type), ward chairs, and bedside folding screens.

(c) *Determination.* The Administrator of General Services has determined that the requirements of agencies for the purchase of furniture cannot reasonably be met by the transfer of excess furniture, including rehabilitated furniture from other departments and agencies, for the reason that all useable excess furniture including rehabilitated items is being utilized to the extent practicable.

(d) *Acquisition of office furniture.* Office furniture shall be purchased only after agency compliance with the reassignment requirements and replacement standards contained in Chapter 5 of Title 5 of the Administrative Regulations. Otherwise, purchase shall be made in accordance with the procedures applicable to purchases generally.

(e) *Consolidated purchase of new household and quarters furniture.* Agencies shall submit purchase authorities for their requirements for new household and quarters furniture of over $100 not obtainable from Federal Supply Schedule contracts to the General Services Administration, Federal Supply Service, Procurement Operations Division, 7th and D Streets SW., Washington, D.C., 20470. Purchases not in excess of $100 may be made by the acquiring agency.

§ 4–4.5043 Furniture and furnishings for executive office.

(a) *Policy.* It is the policy of the Department to furnish and maintain U.S.D.A. offices in accordance with high standards of presentability, neatness, working efficiency and comfort. Furniture and furnishings should present a conservative appearance avoiding ostentation or impressions of undue rank or authority. In keeping with this policy, the acquisition of more expensive office furniture or furnishings than in general use in the Department shall be limited to that required for executive offices or as approved by the Director of Plant and Operations for other use.

(b) *Definitions*—(1) *Executive office.* An office or suite of offices regularly used by an official in Grade GS–15, or above. A suite of offices shall comprise the office used by the official, the reception room, and offices opening therefrom if they are obviously part of the executive suite and to furnish them in standard furniture would detract from the executive appearance of the office used by the official. Executive conference rooms at national headquarters shall be considered as executive offices.

(2) *Executive office furniture and furnishings.* Executive type office desks, tables, telephone stands and cabinets, wardrobes, fully upholstered leather chairs and davenports, office lamps, desk trays, receptacles, and similar furnishings as exemplified by Federal Standards or specifications which have "Executive Office" as part of their title or description, items classed as "executive line" in the furniture trade and items which cost, new, 60 percent more than standard common-use items. (See 5 AR 611.4)

(c) *Approval.* Acquisitions of executive office furniture and furnishings for executive office use shall be approved in writing by the using official and by the agency head or his designee for this purpose. Proposed acquisitions for other uses shall be submitted to the Director of Plant and Operations for approval.

(d) *Assignment.* Executive type furniture and furnishings shall be permanently assigned only to executive offices except where its appearance or condition is below acceptable standards for executive office use.

§ 4–4.5044 Furnishings for personnel quarters.

(a) *Definition.* Furnishings in personnel quarters include furniture, equipment, and miscellaneous items necessary to provide a reasonable degree of livability in personnel quarters, but do not include household goods, such as linen, cutlery, silverware, dishes, and kitchen utensils.

(b) *Policy.* The policy set forth in Bureau of the Budget Circular A–15, Revised, shall govern acquisition of furnishings for personnel quarters by agencies of this Department.

(c) *Acquisition of furniture.* See § 4–4.5042 for special requirements in connection with the acquisition of furniture.

§ 4–4.5045 Gasoline, fuel oil, kerosene, and solvents.

(a) *Estimated annual requirements.* Estimated annual requirements for delivery within the continental United States (excluding Alaska) for bulk deliveries of gasoline, burner and diesel fuel oil (exclusive of liquid fuels for marine use, and burner fuel oil obtained from the GSA fuel yards in Washington, D.C., see § 4–4.5014), kerosene, and solvents shall be submitted in original only, for each delivery point, on the forms listed below to the Regional Office of the General Services Administration serving the area in which the delivery point is located. Each Administration Regional Office will provide agencies in its area additional instructions for submission of requirements, including deadline dates for submission thereof. Copies of the forms may be obtained from the GSA Regional Offices.

GSA Form 211 Estimated Gasoline Requirements.
GSA Form 212 Estimated Kerosene and Fuel Oil Requirements.
GSA Form 213 Estimated Solvents Requirements.

Estimates of requirements should be based on previous records of consumption whenever available. In case of new delivery points, consumption records of similar installations may be used as guides. In the event that annual estimated requirements at specified delivery points are the same as submitted for the previous year, a statement to that effect will suffice. Unless other acceptable arrangements have been made with the GSA regional office concerned, such statement shall list all delivery points at which requirements are unchanged.

(b) *Minimum quantities.* (1) Minimum quantities furnished to one usepoint on one delivery will be:

4 drums—200–220 gallons.
Tank Wagon—200 gallons.
Transport Truck—a full truckload (3,000–7,500 gallons).
Tank Car—a full carload (8,000–12,000 gallons).

(2) Annual requirements which total less than the following minimums for

delivery to one use-point shall not be permitted:

Gasoline, 2,000 gallons.
Burner Fuel Oil, 2,000 gallons.
Diesel Oil, 2,000 gallons.
Kerosene, 500 gallons.
Solvents, 500 gallons.

(c) *Mandatory purchase requirement.* Use of Federal Supply Schedule contracts for gasoline, fuel oil, kerosene, and solvents entered into on the basis of requirements submitted to GSA shall be mandatory for the consignees covered in the contracts. In some instances, no awards are made for certain kinds or grades of any of these commodities for some localities. In such cases, the contract schedule usually provides that the purchase may be made from other sources. Consideration should always be given, however, to the comparative cost of other types or grades that may be substituted and that are covered by the contract schedules.

(d) *Distribution of contract schedules.* Contract schedules showing the items available, contractors, etc., are distributed to Department agencies by the General Services Administration regional office for the area in which the ordering office is located.

(e) *Method of acquisition.* The items included in the contract schedules are procured by issuing purchase order in favor of the contractor, as indicated in the applicable schedule. Purchase orders for diesel fuel oil must state clearly whether or not the oil covered by the order will be used for the operation of diesel-powered highway vehicles as such sales are subject to a tax of 2 cents a gallon, imposed by section 202 of the Highway Revenue Act of 1956 (26 U.S.C. 4041). (See § 4–52.181.)

§ 4–4.5046 Gasoline and other items from service stations.

(a) *Purpose.* This section prescribes the policy and procedure for obtaining authorized service station deliveries of supplies and services as defined in Federal Supply Schedule, FSC Group 91, and amendments thereto, by use of U.S. Government National Credit Card, Standard Form 149.

(b) *Use of U.S. Government National Credit Card, Standard Form 149.* National Credit Cards will be used for securing service station delivery of gasoline, oil and other miscellaneous services authorized by the Federal Supply Schedule, FSC Group 91. These authorized supplies and services are shown on the reverse of the credit card. A card will be assigned for each motor vehicle license tag number, and will remain in effect as long as the tag for which it is issued is in use. The card is valid only for the vehicle bearing the tag number shown thereon. Therefore, when a license tag is destroyed or expires, the corresponding credit card must be destroyed. Lost, stolen, or damaged credit cards should be replaced with a duplicate card.

(c) *Billing data.* The information which may be embossed on the cards is limited to five lines with 22 characters, including spaces, per line. National Credit Cards will be embossed as shown in the format explained below:

(1) *Standard format.*

000 000 000 0,
Agency Name,
Street Address,
City, State,
Tag No. A–1234.

(2) *Billing code.* The billing code is a 10-digit number and is always the first embossed line on the credit card. Nine of the digits are assigned by the using agency. The first three digits will always be zeros, which will signify to the contractors that a Federal contract is involved. The fourth digit may be used by the agency to designate the vehicle class; if use of the vehicle class is not desired, zero will be used. (See Vehicle Codes below.) The fifth and sixth digits will be used to designate the Department. All agencies will use the Department's appropriation prefix "12" for this purpose. The seventh, eighth, and ninth digits will indicate the agency address code number. (See Billing Address Codes in § 4–4.5046(c)(4).) The tenth digit will not be assigned by the agency—it is the reject number for use in automatic billing operations by the contractors.

(3) *Vehicle codes.* In order to provide uniformity throughout the Department, the following vehicle codes will be assigned:

1—Sedans.
2—Station Wagons.
3—Busses and Ambulances.
4—Trucks, 4 X 2, 1 Ton or Less (Including Sedan Deliveries and Carryalls).
5—Reserved.
6—Trucks, 4 X 4, Vehicles (Jeeps, Power Wagons, etc.)
7—Trucks, 4 X 2, Above 1 Ton Up to Two and a Half Tons.
8—Trucks, 3 Tons and Over.
9—Special Purpose Vehicles (Firetrucks, etc., not included in SF–82 Reports).

(4) *Billing address codes.* In the interest of uniformity, agencies will assign billing address codes within the following structure, which is not intended to conform with existing station accounting codes:

001–010	Office of the Secretary.
011–020	Office of Information.
021–030	Farmers Home Administration.
031–064	Economic Research Service.
065–099	Statistical Reporting Service.
100–199	Agricultural Marketing Service.
200–299	Agricultural Research Service.
300–399	Agricultural Stabilization and Conservation Service.
400–499	Soil Conservation Service.
500–699	Forest Service.
700–999	Reserved.

Each agency should provide within the framework of its accounting system for the assignment of billing codes to the fiscal offices, so that invoices will go directly to such offices to assure prompt payment.

(5) *Billing address.* The name and mailing address of the agency to which contractors should send invoices covering the purchases of supplies and services is limited to three lines and shall always be the second, third, and fourth embossed lines on the card.

(6) *Tag number.* The tag number of the vehicle for which the credit card is issued is always the fifth embossed line on the card.

(d) *Procurement of Credit Cards.* Orders for 50 or more embossed credit cards shall be obtained from the embossing contractor shown in Federal Supply Schedule, FSC Group 75, Part VII. Orders for 49 or less of the cards shall be obtained from the Chief, Motor Equipment Division at the nearest of the GSA regional offices, except Boston, Massachusetts. Complete billing data for each card ordered will be furnished, in the standard format shown above, to the respective suppliers as follows:

(1) *Embossing contractor.* Each credit card ordered will be listed on a separate 3" x 5" plain white card.

(2) *General Services Administration.* All credit cards ordered will be listed on one or more plain sheets of paper in consecutive order by tag number.

(e) *Notice to GSA of assignment of billing codes and addresses.* Agencies shall notify the General Services Administration, Federal Supply Service, Procurement Operations Division, GSA Regional Office Building, Washington, D.C., 20407, of assignment of credit card billing codes and billing addresses. Such assignment codes will be listed on one or more plain sheets of paper and in the same standard format shown above, except that the tag numbers are not required. Once GSA has been notified of the assignment of billing codes and billing addresses, the agency may order additional credit cards using the same billing code and billing address for additional tag numbers without reporting such use. Changes in billing codes and billing addresses must be furnished to GSA so that supplies and services contractors may be informed for proper control of billing procedures.

(f) *Use of Federal supply schedules.* Federal Supply Schedule, FSC Group 91, and amendments thereto, list mandatory nationwide contracts for service station delivery of gasoline, oil and related miscellaneous services. Multiple awards are made to provide the greatest convenience and practicability in obtaining service throughout the various States and the District of Columbia. Agencies are encouraged to make informal arrangements for discounts from the posted price of gasoline, oil, and services provided in the Schedule. Full details on delivery tickets furnished by service station operators are given in the Schedule. Vehicle operators, however, should verify the volume and dollar and cents meter readings and other charges on delivery tickets at the time of purchase. The copies of delivery tickets will serve administrative and management purposes as determined necessary by the agency.

§ 4–4.5047 GSA controlled space, services and facilities.

GSA Regulation 2–II–304.04, Exhibit 8, Appendix C, and Plant and Operations Memorandum No. 55 establish principles and guidelines for reimbursement for services and facilities incident to the use and occupancy of space in GSA controlled buildings. Related procurement actions should be accomplished consistent therewith.

§ 4–4.5048 Installment purchasing.

Installment purchases are not authorized and contracts of this nature will not be entered into. (Decision, Comp. Gen. to Secretary of Treasury, A–71413, March 4, 1936, Unpublished.) Installment purchases are those where payments are made in deferred installments in the same manner as individuals arrange with credit stores.

§ 4–4.5049 Insurance.

See Subparts 1–10.3, 1–10.4 and 1–10.5; and Subpart 4–10.3.

§ 4–4.5050 Interest.

In the absence of a specific statute authorizing purchasing officers to obligate the Government to pay interest for delay in paying for supplies or materials, purchase conditions should avoid carefully any reference to stipulations predicated thereon. (22 Comp. Gen. 772.)

§ 4–4.5051 Kerosene.

See § 4–4.5045, Gasoline, fuel oil, kerosene, and solvents.

§ 4–4.5052 Livestock products.

See Subpart 4–4.6.

§ 4–4.5053 License plates for motor vehicles.

See § 4–4.5061, Motor vehicles, tags, shields, and other identification.

§ 4–4.5054 Management and operating contracts.

Management and operating contracts are cost-reimbursement type contracts under which the Government contracts with non-profit institutions, private businesses, or universities. Under this type of contract the contractor is required to administer, on behalf of the Government, research or development establishments wholly devoted to Government work or Government research or development programs or to administer and operate Government-owned or leased industrial facilities; or to provide such personal or professional services as are authorized by law. Bureau of the Budget Circular No. A–49, February 25, 1959, contains general criteria for this type of contract. Approval of the Director of Plant and Operations shall be obtained for use thereof.

§ 4–4.5055 Meat inspection tags, labels, etc.

Appropriations for meat inspection may be expended for the purchase (7 U.S.C. 431) of printed tags, labels, stamps, and certificates without regard to laws applicable to public printing.

§ 4–4.5056 Membership fees.

(a) Payment of membership fees or dues from appropriated funds, for any officer or employee of the Government, in any society or association is not authorized except as follows:

(1) Where payment is authorized by specific appropriation or is provided for in express terms in some general appropriation. (5 U.S.C. 83)

(2) Where attendance at meetings are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision or management of those functions or activities. (5 U.S.C. 2318(b))

(3) Where such expenses are incidental to the delivery of lectures, the giving of instruction, or the acquiring of information at meetings by employees or subjects relating to the work of the Department authorized by law. (5 U.S.C. 83)

(b) Fees and other charges may be paid at Government expense where such action is necessary for the direct benefit of the agency. Such payments should be made in the name of the agency. (See 19 CG 937; 24 CG 814; and 33 CG 126.)

§ 4–4.5057 Men with equipment.

In accordance with law (5 U.S.C. 542a) funds available for field work in the Department may be used for the employment by contract, or otherwise, of men with equipment, boats, work animals, and animal-drawn and motor-propelled vehicles. Such services are to be purchased as nonpersonal services.

§ 4–4.5059 Motor vehicles.

(a) *Purchases by the Federal supply service*—(1) *General.* Agencies within the United States, including Hawaii and Alaska, shall procure through the General Services Administration the following new motor-propelled vehicles for the carriage of passengers and freight:

Passenger automobiles, station wagons, carryalls, ambulances, buses, motorcycles, motor scooters, trucks of less than 25,000 pounds gross vehicle weight, and trailers of not less than 5 tons and not more than 12 tons pay load. (See also 5 AR 611.3.)

Purchase authorities for new motor-propelled vehicles shall be placed with the General Services Administration, Federal Supply Service, Procurement Operations Division, 7th and D Sts. SW., Washington, D.C., in accordance with the procurement time schedules in § 4–4.5059(b). Purchase authorities shall be complete as to consignee and shipping instructions; name and address of person, if different from consignee, to receive purchase documents; the appropriation to be charged; and signed by an officer authorized to obligate funds. Upon request, the General Services Administration will procure new motor vehicles not included in the foregoing classifications, in which case, a complete description of the vehicle is to be placed on the purchase authority. Submit separate purchase authorities for each monthly consolidated purchase date shown in § 4–4.5059(b)(2).

(2) *Vehicles covered by Federal Standard 122.* GSA Form 1781, Motor Vehicle Requisition/Code Sheet, should be used to order vehicles covered by Federal Standard No. 122. It should be used as a single line-item requisition wherever feasible.

When equipment shown in the Federal Standard as "Justifiable Option" is requested, the agency must satisfy itself that the vehicle is to be operated under the conditions prescribed for the optional equipment desired. However, no statement of justification is required to be submitted to GSA with the purchase authority.

GSA Form 1781 may be obtained without charge from the General Services Administration, Region 3, Reproduction and Distribution Division, 7th and D Streets SW., Washington, D.C., or from the Administrative Operations Division at the nearest GSA regional office.

(3) *Other vehicles.* Purchase authorities for vehicles not included in Federal Standard No. 122 must include a complete description of the item requested. Deviations from the standard (other than permissible and justifiable options provided therein) in purchasing vehicles of the types and classes covered by the standard, must be approved in advance by the Office of Plant and Operations, in accordance with § 4–1.306–1.

If continuing deviation from the Federal standard is required, requests for changing the standards, supported by adequate justification, should be forwarded through agency channels to the Director of Plant and Operations for transmittal to GSA.

(b) *Procurement time schedules*—(1) *Volume consolidated purchases.* Purchase authorities covering vehicle types included in Federal Standard No. 122 which are received between July 1 and October 15 will be consolidated for purchase in the first volume procurement. Approximately 75 percent of an agency's total annual requirements should be included in this first volume procurement. A second volume procurement will be made to cover all purchase authorities which are received between February 1 and March 31, and should include, insofar as possible, the balance of an agency's total annual requirements.

(2) *Monthly consolidated purchase.* Requirements for vehicles not included in the above volume procurements shall be submitted for consolidation on the dates indicated in the schedule set forth below. Except in emergencies, requirements received too late for consolidation in the current month's purchase will be carried over to the following month's purchase. Requests for special handling of other than strictly emergency requirements shall not be submitted. In the case of an emergency requirement, adequate justification for individual purchase action shall accompany the agency purchase authority.

Monthly consolidated purchase	*Dates*
Vehicles covered by Federal Standard No. 122.	10th of each month.
Passenger-carrying vehicles and light and medium trucks not covered by Federal Standard No. 122; ambulances; motorcycles; and motor scooters.	20th of each month.
Buses; trucks of less than 25,000 pounds gross vehicle weight other than above; and trailers of not less than 5 tons and not more than 12 tons payload.	Last day of each month.
All other categories and types of vehicles.	Last day of each month except June

(3) *Bid opening and delivery dates.* Bid opening dates normally will be from 30 to 40 days after the final date for receipt of agency purchase authorities as shown above. Delivery will range from 60 to 90 days after the bid opening date, depending on the type of vehicle. In connection with annual consolidated purchases, bids will be opened at a date which will permit awards to be made for delivery in February, March, and April for the first volume procurement, and in July and August for the second volume procurement.

(c) *Disposal of exchange (trade-in) vehicles.* The practice of soliciting trade-in bids when purchasing new motor-propelled vehicles has been discontinued. Agencies, however, may sell the used vehicles, or request GSA to sell them, and apply the proceeds to the purchase of the new vehicles. Agency requests to have GSA sell used vehicles shall be on memorandum form and directed to the attention of the Sales Branch at the Administration regional office for the geographical area in which the used vehicles are located. The following information regarding each vehicle should be furnished with such requests: Type, make, year, model, accessories (defroster, heater, etc.), engine number, serial number, license number, mileage, condition, appraised value, acquisition cost, location, name and telephone number of the custodian, date when available for release, and the date from which storage charges, if any, will be required to be paid by the purchaser and the rate charged for such storage. The owning agency should identify the accountable officer by name and station, and indicate the symbol of the appropriation to be credited with the proceeds of sale. When the vehicles have been sold, GSA will furnish the owning agency with the pertinent information regarding the sale, including the name and address of the purchaser, and the amount received for each vehicle. (The fiscal procedures applicable to these transactions are covered in 7 AR, Chapter 2.)

(d) *Prompt payment for motor vehicles.* Agencies are obligated to process all Federal Supply Service invoices for the purchase of automotive equipment promptly without awaiting delivery of the equipment. Any financial adjustments that may be necessary after delivery will be made by the Federal Supply Service. (See 7 AR Chap. 2.)

(e) *Delivery of vehicles.* To permit maximum use of multi-level railroad cars, the General Services Administration has adopted a basing point delivery procedure. Basing points are redistribution points where facilities for unloading the multi-level cars are available. Practically all consignee delivery points are within 300 miles of one of these basing points. Redistribution from basing point to consignee is handled by truck-away carrier under General Services Administration contract. Agencies may arrange with GSA to receive vehicles at the basing points, in which case a nominal release charge will be made by the carrier for handling.

(f) *Reporting delivery of motor vehicles.* It is the intention of the Federal Supply Service to furnish the receiving agency sufficient information, in the copy of the purchase order or in some other manner, to determine whether the vehicles received meet the specifications and what servicing, i.e., unloading, lubrication, etc., will be performed under the contract at delivery point. When inspection has been made and it has been determined that delivery and service have been performed according to contract, or any deficiencies have been adjusted, the delivery report should be forwarded promptly to the Federal Supply Service in accordance with receiving agency procedures.

(g) *Missing items or nonperformance of services.* The procedure to be followed when delivery does not conform to contract terms will be governed by conditions as follows:

(1) *Items required for operation of vehicles.* In the case of missing items or servicing required by the contract that must be supplied or performed before the vehicle can be legally or safely operated, such as tail lights, windshield wipers, unloading from cars, lubrication, etc., the receiving agency should:

(i) Try first to obtain such service or items without additional cost to the Government from the local representative of the contractor, if any, at the delivery point or at a point nearby. If this is accomplished satisfactorily, the delivery report should then be submitted with an accompanying explanation of the facts to the Federal Supply Service.

(ii) If the local representative of the contractor can perform the services required, but will not do so without payment therefor, the receiving agency should place an order with such local representative and, when the services have been performed, make payment to him. A claim should then be filed with the Federal Supply Service for an adjustment. The claim should be in the form of a letter containing all pertinent facts, to which are attached receipts from the vendor supporting the amount claimed, and should accompany the delivery report.

(iii) If there is no local representative or if the local representative or agency of the contractor cannot or will not perform the services required, the receiving agency should obtain the items and services from any source available at the lowest cost obtainable, pay for them, and submit claim for adjustment as stated in § 4–4.5059(g)(1)(ii).

(2) *Items not required for operation of vehicles.* In the case of missing items or servicing required by the contract, but not essential to placing a vehicle in operation, such as a sun visor, hub caps, etc., the receiving agency should proceed as outlined in § 4–4.5059(g)(1). If, however, the local representative of the contractor cannot or will not supply the item or perform the servicing required by the contract, all pertinent facts should be reported by letter through channels to the Federal Supply Service. (Do not receipt for and mail the delivery report until all contract requirements have been complied with.) The Federal Supply Service will handle the case with the contractor from that point on and the receiving agency will be duly informed of the action taken. When the vehicles have been finally brought into conformity with the contract terms, the delivery report should be forwarded to the Federal Supply Service.

§ 4–4.5060 Motor vehicle statutory purchasing limitations.

(a) *Statutory requirements.* Section 5 of the Act of July 16, 1914, as amended (5 USC 78), provides that no appropriations shall be available for the purchase or hire of passenger motor vehicles unless the same has been specifically authorized by law. The statutory authority for purchase or hire by the Department of Agriculture of passenger motor vehicles usually is carried in a general provision in the annual Appropriation Acts. That provision covers all the activities for which appropriations or authorizations are made in the Acts, but does not preclude purchase or hire under specific authorizations contained in laws other than the annual Appropriation Acts. (See 6 AR 356 and 5 AR 623 for information on the transfer of passenger motor vehicles.)

(b) *Definition of passenger motor vehicles.* Whether a vehicle is "passenger carrying" within the scope of the statutory limitations must be determined from the character of the vehicle as shown by its construction and design, and not from its intended use. (14 CG 367; 16 CG 260, 320.) Station wagons, ambulances and buses are regarded as passenegr carrying vehicles; however, ambulances and buses are not subject to the unit cost limitation. They are subject to the numerical limitations. Additional guidelines for classifying passenger carrying vehicles for purpose of purchase within the unit cost statutory limitation follow:

(1) Vehicles officially described as ¼ ton 4 by 4 trucks (commonly called "jeeps") are not to be considered as passenger-carrying vehicles. (23 CG 955)

(2) Half-ton motor propelled vehicles, purchased for use as trucks, with whatever passenger-carrying capacity represented by seats for passengers eliminated, and listed and described by the manufacturers in the class of trucks, are not to be considered as passenger-carrying vehicles. (24 CG 123)

(3) A motor boat is not "a vehicle" for the purpose indicated above. (22 CG 262)

(4) The suburban carryall is constructed primarily for trucking purposes; and is not regarded as a passenger-carrying vehicle as noted above. (29 CG 213)

(5) General Services Administration considers vehicles of the general description of the four-wheel drive jeep station wagon, as trucks. (29 CG 213)

(6) The Comptroller General in 30 CG 97 deems it impractical to set forth a strictly definitive description of a station wagon type vehicle, due to a wide variance in model, type and structure. However, a station wagon is generally an automotive unit built on a passenger car chassis, for the dominant purpose of carrying from six to nine persons, but so constructed that space, easily accessible from the rear, is provided for the transporting of baggage, hand tools or light

equipment; with upper structure completely and permanently enclosed by windows and doors; with door openings in the rear; with rear seat(s) so constructed that they can be either folded into the floor or easily removed to increase the carrying capacity.

(c) *Establishment of numerical limitations.* Each agency is advised, through the allotment process, of the number of passenger motor vehicles which it may acquire in each fiscal year. For details on the application of the numerical limitations, see 6 AR 356. Instruction for reporting acquisition of passenger motor vehicles is in 6 AR 392.

(d) *Unit cost limitation.* The maximum amount that may be expended for any single passenger-carrying vehicle, exclusive of busses and ambulances, is fixed by law. The cost of the vehicle plus the cost of any added accessories shall not exceed statutory unit-cost limitations as follows, for each fiscal year of acquisition:

For automobiles: 1947—$1,050; 1948—$1,300; 1949 through 1955—$1,400; 1956 and 1957—$1,350; 1958 to 1961—$1,500.

For station wagons: No limitation prior to fiscal year 1957; 1957—$1,800; 1958 to 1961—$1,950.

(e) *Costs included in limitation*—(1) *Removable accessories.* Cost of all accessories shall be included as a part of the unit cost limitation provided such accessories when used are ordinarily permanently attached to and become part of the vehicle. However, skid chains, fire extinguishers, safety flares, auto robes, and removable seat covers are not required to be included in such limitation. (19 CG 988)

(2) *Unit transferred to another climatic area.* The purchase of heaters or other accessories to be installed on these vehicles, not previously equipped with such, is not authorized when the cost thereof, together with original cost of the car and accessories previously installed thereon, exceeds the statutory unit cost limitation (17 CG 640). However, recognizing that cars may be purchased without heaters for delivery in warm areas and such vehicles later transferred to colder areas where heaters are needed, the Comptroller General has made the following exception. In such cases, after bona fide operation under the conditions contemplated at time of purchase, a heater may be purchased for a unit transferred to a cold climate area where a heater is required, without a showing that such purchase is not in contravention of such unit cost limitation. A statement citing the transfer and the need for the heater at the new location shall be filed with the purchase document. (28 CG 720)

(3) *Time discount.* Discount offered for prompt payment is not to be deducted from the unit cost for purposes of keeping such cost within the statutory limitation.

(4) *Federal Excise Tax.* The Federal Excise Tax paid on sales of passenger-carrying vehicles to the United States is regarded as a part of the purchase price and is to be included within the statutory limitation. (24 CG 94)

(5) *Transportation cost.* Cost of transportation is not to be included within the unit cost statutory limitation. Where destination prices, only, are quoted, there properly may be deducted from the amount of the bid the actual cost of transportation from factory to destination by the route and method most advantageous to the Government. Where prices are quoted for delivery at an intermediate point, there may be deducted the cost of transportation from factory to such intermediate point. Any packing necessary is considered a part of the transportation cost. (14 CG 82; 16 CG 43; 17 CG 580; 17 CG 854)

(6) *Conversions for special use.* Conversions to adapt the vehicles for special use constitute a part of the price of the unit "completely equipped for operation" and the cost thereof is included in the statutory limitation. (24 CG 94)

(f) *Administrative limitations.* Limousines or heavy sedans shall not be acquired or rented unless authorized by the Director of Plant and Operations. For this purpose, limousines and heavy sedans are defined as those exemplified by Types IV and V of Interim Federal Specification KKK–A–00811c.

(g) *Replacement standards for motor vehicles.* Replacement standards prescribed by the General Services Administration are outlined in 5 AR 611.3.

§ 4–4.5061 Motor vehicle tags, shields, and other identification.

(a) *Decals.* (See 5 AR 880 relative to requirements for identification of motor vehicles.) The Central Supply Section, Office of Plant and Operations, procures Official U.S. Government decalcomania shields (with the legend "For Official Use Only") for Department-owned or leased automotive vehicles from the General Services Administration Region 3, Federal Supply Service, Washington, D.C., and stocks them for the use of agencies both in Washington and in the field. Decalcomanias for "Department" and "agency" identification should be purchased by the using agency, through the channels established for the flow of printing requisitions, from the Government Printing Office.

(b) *Tags.* (1) The Central Supply Section procures from the Superintendent of Industries, D.C. Department of Corrections, Lorton, Va., (in accordance with current regulations of the General Services Administration), and stocks official U.S. Government tags for use on motor vehicles in the field.

(2) Tags for vehicles located and operated in the District of Columbia are to be procured by the agency owning the vehicles from the Department of Vehicles and Traffic of the District of Columbia Government without charge at the time the vehicles are registered or re-registered (see 5 AR 864 and 871).

(3) Motor vehicle letter identification tabs for use with tags issued by the District of Columbia Government (see 5 AR 871), shall be procured by each agency from the General Services Administration, Region 3, Washington, D.C., 20407.

§ 4–4.5062 National defense contracting.

(See Parts 1–17 and 4–17 of this title.)

§ 4–4.5063 Nursery stock.

See Tree Seed, § 4–4.5094.

§ 4–4.5064 Oil, lubricating.

The Defense Petroleum Supply Center each year awards consolidated contracts covering lubricating oils and transformer oil in drums (50–55 gal.), bulk, or tank wagon delivery for all Federal activities in the continental United States (including Alaska).

(a) *Submission of estimates.* The Fuel Supply Office, Department of the Navy, annually requests the Department for estimates. Instructions for the submission of estimates will be provided agencies annually by the Office of Plant and Operations, pursuant to the above request.

(b) *Types of oil covered.* The DPSC contracts cover practically every type of lubricating oil for which there is a need by Federal activities. The contracts do not, however, cover greases, hypoid gear lubricants, nor oil for use in sewing machines, typewriters, adding and calculating machines, or other office machines.

(c) *Use of contracts.* Agency requirements for lubricating oils covered by DPSC contracts shall be obtained by following the methods specified in the applicable "Oil Contract Bulletin," which is issued by DPSC to cover each fiscal year. Instructions for use of the bulletin and the general provisions contained therein should be carefully reviewed. Purchases may be made independently of such contracts when (1) the maximum single order is less than the minimum quantity obtainable under the DPSC contracts, (2) container sizes required are smaller than those available from DPSC contracts, or (3) purchase without regard to existing DPSC contracts is otherwise authorized. However, any other mandatory sources from which the product required is obtainable should be utilized.

(d) *Requests for assistance.* Requests for assistance in the selection of appropriate lubricants or for clearance to purchase without regard to DPSC contracts should be made to the Department of the Navy, Fuel Supply Office, Washington, D.C.

§ 4–4.5065 Paper and paperboard.

Requirements for paper and paperboard stocked by the General Services Administration stores depots should be obtained from that source. Otherwise, needs should be obtained from the Government Printing Office or purchased from commercial sources in accordance with Subpart 4–5.54.

§ 4–4.5066 Personal articles.

Expenditures from appropriations available for the procurement of supplies and materials or equipment may be made for the purchase and maintenance, in accordance with agency procurement policies and procedures, of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. "Protection," as used in this Section means protection from physical injury or occupational disease. Articles of personal equipment other

than for the protection of personnel shall not be purchased from an appropriation of the Department (a) without specific statutory authority, or (b) unless the object for which the appropriation was made cannot be accomplished as expeditiously and satisfactorily from the Government standpoint without such equipment, and the equipment is such that the employee could not reasonably be required to furnish it as a part of the personal equipment necessary to enable him to perform the regular duties of the position to which he was appointed or for which his service was engaged. Care should be exercised to avoid the purchase of special clothing or equipment to be fitted to an employee when it is known that the employee may soon be separated from the service or permanently assigned to other duties. (5 U.S.C. 118g) (See also 3 Comp. Gen. 433 and 32 Comp. Gen. 227.)

§ 4–4.5067 Personal interest in purchases.

Except as may be specifically authorized pursuant to the Department Personnel Manual, no officer or employee of the Department may participate personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise, in a purchase or contract in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest. This is a statutory provision, violation of which is punishable by a fine of not more than $10,000, or imprisonment for not more than two years, or both. (See 18 U.S.C. 208 and Department Personnel Manual Chapter 735, paragraphs 3–3 and 3–17, for statutory restrictions and implementing regulations and rules of ethics for conduct of public business.)

§ 4–4.5068 Procurement of personal services.

(a) *Definition.* For the purpose of this section "personal services" refers to those services rendered the Government by an individual or individuals under Government supervision and on a time basis.

(b) *General rule.* As a general rule, personal services may not be obtained upon a contractual basis but are required to be performed by Government employees who are responsible to and subject to supervision of regular officers and employees. Exceptions to such rule have been recognized in a few cases where employees were not available or qualified to perform the work and where necessitated by unusual conditions encountered in the accomplishment of an object for which a particular appropriation was made—see § 4–4.5068(c). The Department has been given specific statutory authority for contracting personal services as stated in § 4–4.5068(d). Otherwise the general rule herein must be strictly observed.

(c) *General authorization for procurement of personal services.* Agencies are authorized to purchase personal services where it is administratively determined that it would be substantially more economical, feasible or necessary by reason of unusual circumstances to have the work performed through use of procurement procedures and these factors are clearly demonstrable. This authority may be generally utilized only where no qualified employees are reasonably available and the conditions requiring the work are clearly unusual. Factors to be considered in determining whether the conditions faced are unusual include emergencies, short duration of the work and the like. In special circumstances this authority may be utilized even though Government employees are available but in such cases there must be a clear showing of significant economy, feasibility or necessity. (6 Comp. Gen. 180, 21 Comp. Gen. 403, 26 Comp. Gen. 791, 31 Comp. Gen. 372, 510, and 32 Comp. Gen. 427.)

(d) *Utilization of specific statutory authority.* Statutes specifically authorizing the employment of personal services by contract by this Department are as follows:

5 U.S.C. 542a.

5 U.S.C. 55a and 574 (where use of the authority is provided for in the appropriation act.) (See §§ 4–52.104 and 4–52.120.)

7 U.S.C. 1627.

Employment of personal services of an individual under these authorities, other than 5 U.S.C. 542a, is covered in Chapter 302, Subchapter 1–8, of the Department Personnel Manual. Personal services of an organization may be contracted for by agencies where authorized by the above statutes and purchase is otherwise in accordance with the regulations in this chapter. In such cases, formal advertising is not required but there must be reasonable price inquiry.

(e) *Services considered essentially non-personal.* As a general rule, a contract is for non-personal services when the contractor is not to work under Government supervision, and his services are not to be paid for on a time basis. The furnishing of professional or technical services where qualified Government employees are not readily available and where no Government supervision is involved, is generally classed as non-personal services. (These services usually result in a product such as engineering field data, exhibits, building designs, lectures, etc., and are normally performed on a fee basis.) Temporary services performed by those in the mechanical trades such as plumbers, electricians, etc., for the performance of a particular job on a time or job basis are customarily considered non-personal services. (6 Comp. Gen. 180, 11 Comp. Gen. 99, 26 Comp. Gen. 188, 468, 28 Comp. Gen. 296, 31 Comp. Gen. 510, and 33 Comp. Gen. 170.)

(f) *General.* Determination may be difficult in some cases as to whether procurement procedures, special contracting authorities, or employment authorities may be used. In such cases advice should be sought from the Office of Plant and Operations, or the Office of Personnel as appropriate. For requirements for advertising contracts for professional and personal services, see §§ 1–3.204 and 4–3.204.

§ 4–4.5069 Photography.

See § 4–4.5099.

§ 4–4.5070 Post office box rental.

Post office boxes may be rented on an annual basis, or for shorter periods by quarters where necessary. Payments for annual rentals are to be made in advance at the beginning of the fiscal year, and for periods of less than a year either in advance for the whole period, or at the beginning of each quarter in which the box is to be used. (See 7 AR 91 and 25 Comp. Gen. 834.)

§ 4–4.5071 Printing and binding.

Agencies may expend from appropriated funds, necessary amounts for contract field printing as defined in the Printing and Binding Regulations issued by the Joint Committee on Printing. The following certification, signed by the officer under whose authority the field printing is procured, shall be typed or printed on, or will accompany all vouchers involving payments for contract field printing:

I hereby certify as responsible officer that the contract field printing covered by this voucher was procured in accordance with the applicable Government Printing and Binding Regulations of the Joint Committee on Printing.

This certificate must be signed by the responsible officer under whose authority the contract field printing is purchased. All other printing requirements are to be requisitioned from the Government Printing Office through the Office of Information.

§ 4–4.5072 Printing equipment.

(a) *Authority.* Pursuant to the authority conferred upon it by the act of March 1, 1919 (44 U.S.C. 4 and 111), the Joint Committee on Printing promulgated regulations which restrict the purchase, rental, exchange, or transfer from another agency or to or from plants within an agency of printing, binding, and related or auxiliary equipment, without its prior clearance. However, repairs to and replacement of equipment in authorized printing plants with like items may be effected without prior clearance from the Committee.

(b) *Definition.* For the purpose of this section, "printing equipment" is all equipment so classified by the Joint Committee on Printing and listed in the Government Printing and Binding Regulations published by the Committee. Printing and binding equipment also includes office type duplicating and related equipment when such equipment is to be operated in connection with an authorized printing plant. A printing plant is defined in the Government Printing and Binding Regulations. Any question as to whether or not a particular item is classified as printing and binding equipment should be presented to the Printing Branch, Office of Information, for clarification.

(c) *Acquisition approval.* Proposed purchases, rentals, exchanges, or transfers (other than for the purpose of replacing a like item in an authorized printing plant) of printing, binding, and related or auxiliary equipment must be submitted to the Joint Committee on Printing for approval. Requests for approval should be prepared for the signature of the Director of Information as outlined in Title 3 of the Administrative Regulations, and sent to the Office of Plant and Operations for review and forwarding to the Director of Information. (See 5 AR 696 on the transfer and other disposal of printing equipment.) Occasionally, there appear on the market certain types of printing, binding, and related auxiliary equipment utilizing newly developed or improved processes or new principles of operation. Proposed purchases of such equipment must also be submitted to the Joint Committee in order that determination may be made as to whether or not such items come under the classification of printing equipment. Although replacements of printing, binding, and related auxiliary equipment in an authorized printing plant do not require approval of the Joint Committee, such replacements do require prior approval of the Office of Information, as provided in Title 3 of the Administrative Regulations and Information Memorandum No. 19.

§ 4–4.5073 Property forfeited and/or abandoned.

See 5 AR 632.

§ 4–4.5074 Public utility services.

(a) *General policy.* As authorized by Title 7, Section 4510, GAO Manual, contracts need not be executed for public utility services, regardless of the amount or the number of payments to be made, when the utility company's rates are fixed or adjusted by Federal, State, or other regulatory body, except when deemed to be in the best interests of the Government to do so. Rate schedules will not be required for any type of public utility when the invoice or billing includes (1) the total amount of service rendered, (2) the rate charged per unit of service, and (3) the total amount of the charges, or is supplemented by supporting data which set forth detailed charges for all types of services. However, when the utility company requires the execution of an agreement or contract in connection with furnishing the services, a Government contract form must be used, as provided in § 4–4.5074 (b). (This should not be construed as requiring an agreement or contract when the company request a signature on a routine order for the services.) Such agreements or contracts may provide that the services may be at stipulated rates "until further notice." (15 Comp. Gen. 920). When the rates for the service required are not regulated or adjusted by Federal, State, or other regulatory body, the service is available from more than one company, and the aggregate amount involved will exceed $2,500, competitive bids should be solicited and a contract awarded.

(b) *Form of contract or agreement.* When it is necessary or desirable to enter into a contract for any reason indicated in paragraph (a) of the section, the form of contract or agreement shall be as indicated below. Any contract entered into should be numbered and retained for GAO audit. Form AD–225 is for use when it is necessary or desirable to enter into a written agreement for water, gas, electricity, telephone, or other public utility services, and competition is not involved. Otherwise, Forms prescribed by Parts 1–16 and 4–16 may be used to obtain competitive bids.

(c) *Payments for public utility services.* Each agency should take appropriate administrative action to provide procedures which will insure verification by responsible officers or employees that the services have been rendered for the periods stated on the invoice or statement. (See 7 AR 90 (sub. 1) and 93 for payment of public utility services.)

(d) *GSA utility service contracts.* (See GSA Reg. 2–IX–401 concerning contracting, negotiation, and representation involving telecommunications services.) When the General Services Administration has entered into a contract for utility services to be furnished to agencies in Washington, elsewhere in the United States, or in possessions of the United States, each agency in the area covered by such contract shall take utility service thereunder unless specifically exempted by statute or the General Services Administration. "Utilities services" include, without limitation, all public utility services such as water, light, heat, and power by electricity, gas, and steam; communications by telephone, telegraph, teletypewriter, cable and radio, and facilities for such services. (See 4 AR 1102, 1103, for procedures for obtaining clearance on proposed installations of telephone or teletypewriter service.) Contracts of the General Services Administration automatically require contractors to provide service under such contracts only and not enter into a separate contract with an agency seeking service. Should there be any existing agency contracts for these utility services in the same area they should be canceled at the next regular billing period and arrangements made for continuing service under the contracts of the General Services Administration. If it is impracticable, however, for an agency to take such utility service, the matter should be taken up with the Office of Plant and Operations. All public utility service contracts are made by the General Services Administration Headquarters Office in Washington, D.C., and information concerning such contracts may be obtained by agencies from the Office of Plant and Operations.

(e) *Ordering telephone service.* (1) Standard Form 145, Order for Telephone Service, has been prescribed by the General Services Administration for use in ordering telephone service under the following circumstances:

(i) Ordering service on Government switchboards. See 4 AR 1110 for use of SF–145 in Washington, D.C.

(ii) Ordering service under established GSA contracts.

(iii) Ordering service from Government agencies operating joint-usage switchboards.

(iv) Orderng service under arrangements made by agencies of the Department and no contract is entered into in accordance with § 4–4.5056(b).

(2) Standard Form 145 may be obtained from the Central Supply Section, Office of Plant and Operations, or from Regional Supply Depots of the General Services Administration.

§ 4–4.5075 Publications.

(a) *General.* Requirements for published material, including books, periodicals, etc. (except newspapers), not available by assignment from the Department Library, may be purchased by the agencies under authority which has been granted by the Director of the Library. Such purchases are to be made in accordance with standard purchasing procedures. However, the material acquired is subject to the regulations of the Library governing the handling of library material. (See 2 AR 51–56.)

(b) *Newspapers.* Agencies may purchase single issues of or subscriptions to newspapers. Such purchases should be limited to newspapers containing useful data such as price quotations, statistical information, and current indices of trends in commodity operations. Whenever practicable, newspapers carrying approximately the same news in a local area should be subcribed to on a rotating basis rather than simultaneously. No newspapers shall be purchased for the personal use of an employee.

(c) *Advance payment of subscription charges.* In accordance with statutory provisions (31 U.S.C. 530), subscription or other charges for newspapers, magazines, periodicals, and other publications for official use of the Department, may be paid for in advance from appropriations available therefor. (See 7 AR 94 for details on this subject.)

§ 4–4.5076 Purchasing officer interest in employee purchasing association activities.

Regulations on the conduct of employees in Department Personnel Manual, Chapter 735, subchapter 2–6, provide, among other things, that employees of the Department shall not perform or be engaged in any work for private organizations if such work may be construed by the public to be the official acts of the Department, or may result in a conflict between such private interests of the employee and his official duties. In view of this regulation, employees of the Department regularly engaged in procurement for the Department may not hold offices in employee purchasing associations.

§ 4–4.5077 Radiation equipment and radioactive material.

(a) *Definitions*—(1) *Radioactive material.* Radioisotopes, fast neutron sources (e.g., moisture meters), any other source, whether sealed or unsealed, which naturally or as a result of artificial inducement spontaneously emits radioactive particles and/or rays, and any device incorporating such a source.

(2) *Radiation equipment.* Electron microscopes, X-ray and such other

equipment and instruments which are capable of creating radiation hazards.

(b) *Restrictions.* Prior approval of the Radiological Safety Committee, Agricultural Research Service must be obtained for the acquisition, use, or disposition of this material. (See 1 AR 115 n. and 1 AR 376–386.2.)

§ 4–4.5078 Recreational equipment.

The furnishing of recreational and entertainment facilities for Government personnel is unauthorized in the absence of specific statutory authority or authority by necessary implication. (18 Comp. Gen. 147.) The following authorization has been given this Department:

The Forest Service is authorized to expend from available funds not to exceed $35,000 annually for providing recreation facilities, equipment, and services for use by employees of the Service located at isolated situations and, where deemed to be in the public interest, by members of the immediate families of such employees. (16 U.S.C. 554d.)

§ 4–4.5079 Refrigerators.

As used in this section, "refrigerators" means all new portable commercial and household refrigerators (exclusive of gas operated refrigerators 4 cubic feet and under) and low temperature storage cabinets, with self-contained electric or gas units in conformance with applicable Federal Specifications or specifications furnished by the requisitioning agency when the requirement is not covered by a Federal Specification. Purchases, within the continental United States (including Alaska), for agencies of the Department, will be made by the consolidated purchase program of the General Services Administration. Purchase authorities for these items shall be submitted to General Services Administration, Federal Supply Service, National Buying Division, 7th and D Streets SW., Washington, D.C., and shall be complete as to specification requirements, required delivery dates, shipping instructions, and any other pertinent information. Requisitions will be accumulated by the National Buying Division during the period from the 16th day of each month through the 15th day of the following month and then consolidated for issuance of invitations for bids.

§ 4–4.5080 Rental of equipment.

(a) *Policy.* When the need for equipment is so limited as to make it uneconomical to purchase, such equipment may be rented or obtained on loan.

(b) *Advertising.* The provisions of Subpart 1–2.1, requiring advertising for supplies or services, is applicable to rental of equipment. (See 18 Comp. Gen. 579.)

(c) *Written contract.* As a matter of good business, rental or loan arrangements should be covered by a written order, contract, or agreement, regardless of the amount involved, thereby fixing the responsibilities of the parties concerned.

(d) *Special contract provisions.*—(1) *Operating supplies.* In the case of motorized equipment the specifications should state clearly whether the Government will furnish gasoline, fuel oil, lubricating oil, etc.

(2) *Repairs by the Government.* The contract should be specific as to which party shall be responsible for repair and maintenance of the equipment and the liability and extent of loss assumed by each. If the Government is to assume this responsibility, it is desirable to establish a monetary limit of liability therefor, such as not to exceed the value of the equipment being rented. The contract may provide for the assumption of liability for the equipment during the period it is in the Government's possession. Funds may be expended by the agencies for necessary repairs so long as the property continues in use by the Government. After the property has served its purpose, however, if there is damage to or loss of the property, a claim for such damages must be referred to the General Accounting Office for settlement unless the obligation of the Government is liquidated by the contract. For example, the contract may place a value on the property to be paid in the event of total loss.

(3) *Rental period.* The rental should be for a definite period of time and be such as would not carry it beyond the time for which an appropriation is available. However, if the basis of payment is in terms of hours, days, etc., requirements may be stated in terms of estimates when the exact requirements are not known.

(e) *Purchase option in rental contracts.* When there is reason to believe that conditions may require continued use of the equipment to the extent that rental would be uneconomical, bidders may be asked to indicate in their bids at what price they would be willing to sell the equipment should the Government elect to purchase at a later date prior to the expiration of the rental agreement. Bidders should be asked also to indicate how much of the rental price may be applied against the purchase cost. Award of bids for rental-purchase of equipment should be based entirely upon the price and conditions of rental as the purchase may or may not be effected. (See 15 Comp. Gen. 1136.)

§ 4–4.5081 Rental of equipment from Forest Service.

The Forest Service may rent equipment to other Federal agencies at rates sufficient to cover the cost of the repair, maintenance, and depreciation thereof. (16 U.S.C. 578, 580.)

§ 4–4.5083 Returnable containers.

(a) *Trade custom.* Supplies are sometimes furnished in containers that are of such construction that they can be used repeatedly. Contractors very often do not include such containers in the sales contract, but loan or rent them to purchasers of their products, and it is desirable that the bid invitations provide for such loan or rental, and payment of cash value in case of loss or damage while in the possession of the Government. Contractors customarily loan such containers free for certain designated periods, such as 30, 60, or 90 days, after which there is a rental or demurrage charge for containers not returned before the end of the free period. The containers are usually numbered for purposes of identification.

(b) *Demurrage computations.* Frequently long periods elapse before some containers are emptied and returned, and if payment is made for demurrage of each container, considerable demurrage would frequently occur. Accordingly, provisions should be made in the bid for the return of the containers and payment of demurrage under the "quantity basis" system. For example, with a 30-day free period, if 10 containers obtained July 1 are held for 45 days, and 10 obtained July 13 are held 15 days, no charges accrue under the "quantity basis", because 10 containers will have been returned at the close of July and the remaining 10 can be held until August 16. If demurrage had been payable on each individual container, there would have accumulated 150 days demurrage on the containers obtained July 1 and returned August 15, even though the 10 obtained July 15 were returned when only half the allowable free period had expired. (See 17 Comp. Gen. 301.)

(c) *Suggested provisions for invitation to bid.* There are quoted below suggested clauses covering containers, including oxygen and acetylene gas cylinders:

Containers. Bidder must fill in completely the blank spaces below:

Containers owned by the contractor shall be loaned free of rental charge for a period of _____ months. After the period of free use a rental of $_____ per month per container will be paid for their use by the Government for not to exceed _____ months. Provided: that where a record of the serial numbers of individual containers is not kept by the contractor, demurrage payments may be made on the quantity basis. All containers not returned to the contractor within the periods of free use and rental will be paid for at the rate of $_____ each, all rental charges in such cases to be applied as part of said price, and the Government to own the containers outright. All empty containers which are not retained and paid for will be returned to the contractor, transportation charges prepaid by the Government.

Gas cylinders. Bidder must fill in completely the blank spaces below:

Cylinders shall remain the property of the contractor and shall be loaned to the Government for a period of 30 days after the date of shipment of cylinders from contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period, there will be charged, and the United States agrees to pay the contractor, a rental at the rate of $_____ per cylinder per day for the use of the cylinders not returned to the contractor.

All cylinders not returned to the contractor on or before the expiration of a 90-day rental period or lost or damaged beyond repair while in the possession of the United States Government shall be paid for by the United States to the contractor at a replacement value of $_____ for each oxygen cylinder of 200 to 220 cubic feet capacity and $_____ for each acetylene cylinder of 200 to 250 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the United States. But if and when located they may, at the option of the Government, be returned to the contractor and, in such

event, credit shall be allowed to the Government at the replacement value paid, less rental at the rate of ------ cents per day beginning at the expiration of the free loan period as aforesaid to the date upon which cylinders are turned over to carrier for return to the contractor's plant.

§ 4–4.5084 Rugs.

Agency property management officers shall establish standards of quality and colors for rugs to be acquired for agency use. Rugs may be acquired wherever agency property management officers determine they are needed for adequate floor covering in terms of executive office appearance, accoustical treatment, or otherwise in the interest of economy and efficiency. (See 5 AR 591.)

§ 4–4.5085 Serums.

See § 4–4.5095.

§ 4–4.5086 Sidewalks, curbs, or street paving.

Funds available to the Forest Service are available for expenses of, or payment of assessment for, construction of sidewalks, curbs, or street paving along the boundary of Government-owned residential or otherwise improved lots. (16 U.S.C. 555b.)

(See § 4–52.146.)

§ 4–4.5087 Solvents.

See § 4–4.5045.

§ 4–4.5088 Space studies, layouts, and interior design.

Interior office design or space layout services may not be procured from non-Federal sources without prior approval of the General Services Administration. (See GSA Reg. 2–II–101.05.) Where in the discharge of its responsibilities for efficient use of space, an agency requires such services, they should be requested from the appropriate GSA regional office. Any problems encountered in satisfying requirements for space studies and interior design assistance should be referred to the Office of Plant and Operations.

§ 4–4.5089 Standard forms and blankbook work.

(a) *Forms.* The regulations of the Joint Committee on Printing and those of the General Services Administration, issued pursuant to the Federal Property and Administrative Services Act of 1949, as amended, require that standard forms be obtained from the GSA supply centers. By arrangement with the Government Printing Office, GSA also stocks for issue as supply items other forms commonly used by Federal agencies, such as miscellaneous forms, Civil Service Commission forms, etc. Agencies shall therefore obtain from the regional supply centers, in accordance with established procedure covering the requisition of any regular supply item, such forms as are listed in the GSA Store Stock Catalog, except as provided below, or otherwise specifically authorized:

(1) Requirements in the District of Columbia will be filled from stocks of the Central Supply Section, as provided in § 4–5.

(2) Standard forms which require overprinting, serial numbering, or other alteration, and those requiring paper of a different grade, weight, or color, will be obtained from the Government Printing Office through the Office of Information, as provided in § 4–5.54.

(3) Orders for large quantities of forms which GSA is unable to fill from stock at either the region with which the order is placed or Region 3, Washington, D.C., will be ordered by GSA from the Government Printing Office for production and direct delivery to the requisitioning agency, when feasible, and when the size of the order justifies a separate printing. Government bills of lading, if required, will be furnished by GSA. In such cases, the GPO will bill GSA for the forms shipped and GSA will collect from the receiving agency.

(b) *Blankbook work.* Miscellaneous supplies, commonly known as blankbook work, such as stenographers' notebooks, ruled cards, stock columnar pads, etc., are also stocked by GSA supply centers, and are listed in the Store Stock Catalog. Agencies should obtain their requirements of such supplies from the supply centers, except for Washington, D.C., needs, which will be obtained from the Central Supply Section.

(1) *Waiver.* The Government Printing & Binding Regulations, issued by the Joint Committee on Printing, provide that blank books not available through GSA but regularly carried in stock by commercial dealers and which require no printing and/or binding operation after receipt of order may be procured without obtaining a waiver from the Government Printing Office: *Provided,* That no order or orders issued by a purchasing office for each type of blank book exceeds $500 in any one year.

§ 4–4.5090 Stenographic reporting.

Under authority of the Department of Agriculture Organic Act of 1944 (5 U.S.C. 55a and 520a), the Department is authorized to purchase stenographic reporting services. Such services will be purchased in accordance with the rules governing purchases in general. The Department enters into a contract each year covering stenographic reporting service in the continental United States which provides for the transcribing of records of all public hearings conducted by the Department. That contract shall be utilized for stenographic reporting services required at all public hearings in connection with quasi-judicial, quasi-legislative, and other administrative proceedings. Term contracts for reporting services are also entered into by the General Services Administration and other Government agencies. These latter contracts may be used for proceedings not covered by the Department contract; such as for security hearings, meetings, conferences, etc. Information concerning reporting services provided for under existing contracts may be obtained from the Procurement and Contract Management Division.

§ 4–4.5091 Telephones in private residences (Forest Service only).

Under certain conditions, appropriations of the Forest Service are available to pay for telephone service installed in residences of employees and of persons cooperating with the Forest Service. 16 U.S.C. 580F.

§ 4–4.5092 Trading stamps, redeemable coupons, etc.

(a) *Purpose.* It is the purpose of this section to state policy and procedures for the receiving, handling, and disposition of trading stamps, redeemable coupons, trade incentive items, etc., offered by suppliers as a means of granting a discount on purchases from them or as an inducement to trade with such suppliers.

(b) *Authority.* GSA Circular No. 190, Revised; Comptroller General Decision B–128096 (unpublished) of April 14, 1960.

(c) *Policy.* It has been indicated by the Comptroller General that the giving of trading stamps is a means of granting a discount for cash payment of small purchases. Accordingly, trading stamps, redeemable coupons, and the like, must be accepted unless their official utilization would obviously be impractical and economically unsound in accordance with the following criteria.

(d) *Trading stamps and redeemable coupons.* Every reasonable effort should be made to obtain prices not involving stamps or coupons of any kind. Where this is not feasible, stamps or coupons must be accepted where they can be officially utilized as follows:

(1) Arrangements for redemption should be made at the lowest appropriate organizational level of each agency. They may be redeemed for merchandise usable in the discharge of official functions. It may be possible to arrange with the trading stamp company to make redemption in cash, which could then be deposited to the credit of the applicable appropriation.

(2) If, in terms of practicality and administrative cost, redemption of trading stamps or redeemable coupons is not feasible, arrangements should be made for their transfer, without reimbursement or accountability, to a nearby Federal hospital or other similar Federal institutions such as those operated, managed, or supervised by any one of the following:

(i) Veterans Administration (hospitals, centers, and domiciliaries)

(ii) Public Health Service (HEW), or

(iii) Department of Defense.

Prior to such transfer, the transferring agency should ascertain whether the proposed recipient agency is prepared to receive and to utilize such trading stamps or coupons.

(3) In view of the administrative cost involved, it is not considered generally necessary to attempt utilization of redeemable coupons in the form of box tops, labels, etc., except in connection with large volume purchases where the negotiation of a special cash discount in lieu of recovery of such coupons may be feasible.

This contemplates that there would generally be no central collection of trading stamps or coupons; there are to be no accountability control records established thereon; that in general the internal procedures for handling trading stamps is to be such as will result in the least administrative burden or cost.

If the above methods of achieving official utilization of trading stamps or coupons involves administrative costs out of proportion to the value to be realized, the circumstances thereof should be reported to the Office of Plant and Operations.

(e) *Trade incentive items.* It is customary in business generaly to offer inducements to potential customers in the form of tangible items given free in return for trading with the firm. For instance, service stations may offer free packets of seed, tableware, cigars, etc., with each tankful of gasoline, each oil change, etc., purchased from them. Most of these items have no feasible official use in this Department. The cost of collecting them for use by programs of other Federal agencies would ordinarily be unreasonable in relations to the value to be realized. Such items should not be accepted for personal use of the employee since to do so would be in the nature of accepting a gratuity. As a general rule, therefore, it is considered appropriate to refuse items of this character since it would obviously be impractical and economically unsound to attempt official utilization thereof.

§ 4–4.5093 Training services.

Training services are defined in Department Personnel Manual, Chapter 410, Subchapter 1, paragraphs 9b and 10a; and generally cover training provided by non-Government employees or by, in, or through non-Government facilities. Outside training of employees is subject to prior approval by either the Director of Personnel, or the agency head or his designee in accordance with Department Personnel Manual, Chapter 410, Subchapter 3–2. The purchasing officer should have assurance that this approval has been obtained prior to purchasing training services. These services may be procured without formal advertising and payments may be made in advance to the employee or to the training facility without regard to Revised Statute 3648 (31 U.S.C. 529). Otherwise, purchase of such services should be made in accordance with the usual procurement procedures of this Title subject, however, to the following special requirements: Section 14 of the Government Employees Training Act, 5 U.S.C. 2313 as implemented by Civil Service Training Regulations, 5 CFR 39.308; and Department Personnel Manual, Chapter 410, Subchapters 3 and 5 requires that:

(a) When the outside training is to be conducted by, in or through an organization the requirements of Section 14 of the Act are met if the purchasing officer determines that the organization is not on the list in Department Personnel Manual, Supplement 732–32, of organizations designated by the Attorney General pursuant to Section 12 of Executive Order 10450.

(b) When the training is to be conducted by an individual with whom contractual or other arrangements are made directly, a loyalty determination must be obtained from the Office of Personnel in accordance with Department Personnel Manual, Chapter 410, Subchapter 3–2. This determination must be made prior to contracting with or otherwise arranging for the services except in emergency situations, under which circumstances such determination must be made prior to payment. In addition, there must be obtained from the individual an affidavit, certificate, or express contractual warranty that he does not teach or advocate the overthrow of the Government of the United States by force or violence. This requirement that an affidavit, certificate, or express contractual warranty must be obtained does not apply (1) to individuals who perform training under oral or other informal arrangements for periods of sixteen hours or less within a single program; or (2) to individuals who perform training without compensation by the Government (whether or not the Government provides payment or reimbursement for their travel and subsistence incident to such training). The following certificate, where applicable, must be dated and signed by the individual who is to perform the training, and will be sufficient for the purposes outlined above:

I ---------- of ----------
(Name) (Location)
do hereby certify that I do not teach or advocate the overthrow of the Government of the United States by force or violence.

Signed ----------, ----------
(Date)
at ----------

(c) Schools or other facilities which (1) discriminate because of race, creed, color, or national origin in the admission or subsequent treatment of students or (2) place any restrictions on trainees because of race, creed, color, or national origin, may not be used for training at Government expense. If an agency plans to make use of a school or facility, and does not know whether it complies with this policy, the agency shall submit a report to the Office of Personnel in accordance with DPM AG Chapter 410, Subchapter 5–3c.

§ 4–4.5094 Tree seed, cones, and nursery stock (Forest Service only).

The Chief, Forest Service, is authorized, and may delegate such authority, to purchase, without advertising, whenever he determines that such method is in the public interest, (a) tree seed or cones or forage plant seed, when the amount involved does not exceed $10,000, and (b) forest tree nursery stock, when the amount involved does not exceed $500. (16 U.S.C. 504.)

§ 4–4.5095 Tuberculin, serums, antitoxins, etc.

Purchases may be made without advertising of samples of tuberculin, serums, antitoxins, or analogous products, of foreign or domestic manufacture, which are sold in the United States for the detection, prevention, treatment, or cure of diseases of domestic animals. (7 U.S.C. 430.)

§ 4–4.5096 Twine.

All purchases of twine shall be governed by the following provision which appears in the annual Agricultural Appropriation Act:

* * * that, except to provide materials required in or incident to research or experimental work where no suitable domestic product is available, no part of the funds appropriated by this Act shall be expended in the purchase of twine manufactured from commodities or materials produced outside the United States.

§ 4–4.5097 Typewriters.

(a) *Purpose.* This section prescribes policies and methods relating to the purchase of typewriters for use within the continental United States, and the maintenance of typewriters within the continental United States, Hawaii, Alaska, Puerto Rico, and the Virgin Islands. (See 5 AR 609.7 and 611.5 for use and Replacement Standards.)

(b) *Authority.* The Annual Independent Offices Appropriation Act and the Federal Property and Administrative Services Act of 1949, as amended (77 Stat. 436), and regulations of the General Services Administration issued pursuant thereto.

(c) *Definition.* "Typewriter" means manually and electrically operated machines having standard or special keyboards, designed to produce printed characters by impression of type upon paper through the medium of an inked ribbon. It includes vari-typer, hektowriter, proportional spacer, flexowriter, justowriter, and portable-type machines, but does not include bookkeeping, billing or teletype machines.

(d) *Purchase*—(1) *Procedures.* Agencies shall purchase new typewriters directly from Federal Supply Schedule contractors only after complying with the utilization and replacement standards as prescribed in 5 AR 609.7 and 611.5. In addition, prior approval must be obtained from the Joint Committee on Printing pursuant to § 4–4.5011 before purchasing any typewriters to be used for printing as defined in the Government Printing and Binding Regulations of the Joint Committee on Printing (this includes varitypers, flexowriters, and justowriters).

(2) *Prices.* The annual Independent Offices Appropriation Act provides that no part of any money appropriated by that or any other Act shall be used during any quarter of the fiscal year to purchase typewriters within the continental United States at a price which exceeds 90 percent of the lowest net cash price, plus applicable Federal excise taxes, accorded the most favored customer (other than the Government, the American National Red Cross, and purchase of typewriters for educational purposes only) of the manufacturer of such machines during the six months' period immediately preceding such quarter. It may be assumed that the Federal Supply Schedule contract prices comply with this requirement.

(e) *Maintenance service.* See 5 AR 612.

§ 4–4.5098 Used or reconditioned equipment.

(a) *Policy.* It is the policy of this Department that used or reconditioned equipment (not replacement parts for mechanical equipment, such as recon-

ditioned parts for automobiles, et cetera) is not to be purchased when new equipment is available at a reasonable cost. New equipment is generally sold by persons having an interest in customer satisfaction; also, the purchaser of new equipment is reasonably sure of getting quality commensurate to the price. In addition, responsibility is more easily fixed than when used equipment is purchased.

(b) *Purchase provisions.* If new equipment is not available, or the price thereof is excessive, and it is necessary to advertise for used or reconditioned equipment, care should be taken to specify clearly just what quality or what degree of precision is required. Bidders should be requested to indicate the place at which the equipment may be inspected. The Government should make an inspection prior to the award. (See Subpart 4–14.1.)

§ 4–4.5099 Visual services.

All arts and graphics, exhibits, still photography, and motion picture work shall be ordered through the Office of Information on a reimbursable basis, except as may be otherwise authorized by that Office.

§ 4–4.5099a Water coolers.

As used in this section "electric water coolers" mean all new water coolers for land use of the following types and sizes listed in the latest issue in effect of Federal Specification 00–C–566:

Bubbler Style (type I, air-cooled condenser; type II water-cooled condenser), size 5, 10, and 20.

Cafeteria Style (type III, air-cooled condenser; type IV, water-cooled condenser), sizes 20 and 30.

Remote Style (type V, water-cooled condenser), sizes 10 and 20.

Bottle Style (type VI, air-cooled condenser), size 3.

Purchases within the continental United States (including Alaska) for agencies of the Department will be made by the consolidated purchase program of General Services Administration. Purchase authorities for water coolers will be submitted to the GSA Regional office serving the ordering office and shall be complete as to type, size, description and current characteristics (AC or DC current, phase, voltage, and cycle) time or times when deliveries are required, consignment and shipping instructions and other pertinent information. GSA will fill orders from stock only when the ordering office indicates that immediate delivery is required or when it is determined most advantageous to the Government, price and other factors considered. Orders which are not filled from GSA stores stock will be extracted immediately by the GSA regional office to the Procurement Operations Division of GSA. That office will consolidate by the first day of the following month all items extracted to it for consolidated purchase. Coolers to be manufactured of particular materials specified by a requisitioning agency will be furnished only when the need for such coolers is adequately justified.

§ 4–4.5099b Year-end purchasing.

(a) *Applicable statute.* Public Law 159, 81st Congress (31 U.S.C. 712a) restricts the use of appropriations "made specifically for the service of any fiscal year, * * * to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year." This Act, effective July 1, 1949, superseded section 3690 R.S. 31 U.S.C. 712.

(b) *Interpretations of the law.* The Comptroller of the Treasury (4 C.D. 553) in considering a case under section 3690 R.S. which also contained the foregoing language quoted from P.L. 159, ruled, in part, as follows:

> The purpose of section 3690 is to restrict the use of annual appropriations to expenditures required for the services of the particular fiscal year for which they are made, * * * If * * * work is actually begun within the fiscal year for which the annual appropriation applicable thereto was made, it may ordinarily be fairly held that the work was for the service of that fiscal year, and provision for payment for the work from the unexpended balance of the appropriation is therefore made by the clause, "for the fulfillment of contracts properly made within that year."
>
> * * * There is no authority in an appropriation made specifically for the service of a particular fiscal year to enter into contracts for supplies, etc. for the service of a subsequent fiscal year, and therefore as to that appropriation such a contract is not "properly made within that year".

The apparent strictness of the interpretation in the last paragraph above was, however, somewhat alleviated by the Comptroller General at a later date in the following language:

> Orders placed by a Government department or establishment during the month of June for such quantity of supplies or materials as are reasonably required to maintain a current running supply for such department or establishment until such time as deliveries can be effected under orders placed under the contract for the subsequent fiscal year are a need of the fiscal year in which ordered and obligate the appropriation for that year. (2 C.G. 825.)

(c) *Policy.* It is the Department's policy, in strict compliance with the statute which restricts the use of appropriations made specifically for the service of any fiscal year, to insure that the same test of need is applied for any proposed expenditures at or near the close of the fiscal year as at the beginning or at any other time during the year. No unnecessary expenditures of year-end balances of funds (which would otherwise revert to the Treasury) for supplies, materials, etc., shall be authorized.

(d) *Pertinent factors.* It is recognized that during the closing months of the year a considerable amount of purchasing may occur (1) because of the agricultural nature of the work, such as seasonal programs, (2) where no amount of advance planning can materially affect the timing of purchases, as in the cases where special appropriations are made late in the year and in such unusual instances as restoration expenses due to tornadoes and fires, unavoidable procurement delays, etc., (3) in connection with continuing appropriations, where fiscal-year ends have no particular significance in timing purchases, and (4) where, due to prudent program management, obligations for needed supplies, equipment or services have been deferred, as a matter of administrative determination, until the latter part of the fiscal year, in order that the activity concerned might be kept in position, during the earlier parts of the year, to meet emergencies or other exigencies that might arise, without the necessity for seeking a supplemental appropriation.

(e) *Documentation.* Because of the continued interest in the general subject of year-end purchasing, agency procurement records should be so maintained that if required for reporting purposes factors having a significant effect on last quarter buying could be readily submitted.

(f) *Advance planning and closing dates for procurements.* Compliance with the above policy shall be effectuated in accordance with written instructions issued by heads of agencies by:

(1) Requesting program operators to make known their needs to those responsible for purchasing as far in advance as possible so that procurement of materials, supplies, equipment, and services may be planned to the best advantage, all factors considered;

(2) Working out practicable means of relating procurements to quarterly apportionments to the end that obligations for the last quarter for purchasing shall not be excessively larger than those of other quarters;

(3) Determining, in the light of specific program requirements, maximum amounts of consumable supplies which may be procured. Unless direct savings can be shown, such amounts should not exceed a maximum of 60-day stock to be procured during the month of June;

(4) Determining agency closing dates, not to exceed the following, for purchases to be made from appropriations terminating June 30:

(i) *Procurement contracts.* Bids for construction contracts involving more than $10,000 will not be opened after May 15. Bids for other definite-quantity Department contracts will not be opened after June 15.

(ii) *Purchase orders.* Purchase orders, other than under contracts referred to in the previous paragraph, for nonexpendable property will not be placed after June 15. If any orders are placed with GSA for nonstock items such orders must be forwarded to the appropriate regional office prior to June 1.

(iii) *Purchases from or through General Services Administration.* Purchase orders or requisitions submitted at the close of each fiscal year shall reflect actual agency requirements, and shall not be used as a means of exhausting appropriation balances. Each office submitting purchase orders or requisitions covering articles of equipment or supplies for processing by the Administration which are chargeable to appropriations expiring on June 30 of each year shall observe the following:

(A) When required by law or statutory regulations to place orders includ-

ing orders which are required to be placed in accordance with the maximum order limitation of Federal Supply Schedules, with General Services Administration, such orders may be recorded as obligations of the ordering agency at the time the order is issued.

(B) Orders placed with GSA on an optional basis covering items listed in the current edition of GSA Stores Stock Catalog may be treated as obligations of the ordering agency at the time the order is issued. However, such orders shall comply with the general rule that the materials, supplies, or equipment ordered are intended to met a bona fide need of the fiscal year in which the need arises or to replace stock used in that fiscal year; and, the order must be firm, complete, and request prompt delivery.

(C) Orders placed with GSA on an optional basis covering articles or services to be purchased for direct delivery may not be recorded as obligations of the ordering agency until the Administration awards a contract for the required articles or services. Such orders should be submitted by May 10, if possible, and in any event not later than June 1, in order to afford sufficient time for the orderly completion of the necessary action before June 30. When such an order is received too late to permit the execution of contracts by June 30, the ordering activity will be notified immediately and requested to furnish instructions as to the action to be taken. Based on these instructions, procurement action will be taken or the order will be returned, without action, to the ordering activity.

(D) Requests for special handling of other than strictly emergency requirements shall not be submitted. In the case of emergency requirement, adequate justification for individual purchase action shall accompany the agency purchase authority.

(iv) *Emergency needs.* In an actual emergency, exemption from the terms of the above restrictions may be permitted:

(A) Where solicitation of bids is involved, there shall be submitted to the authorized contracting officer, prior to such solicitation, a statement of the circumstances requiring deviation from the restrictions.

(B) Where the procurement does not involve solicitation of bids, the purchase order or requisition may be placed with the proper source of supply, but there shall be submitted immediately to the appropriate contracting officer a statement of the circumstances which required the restrictions to be waived.

(5) Determining similar advance closing deadlines for purchases to be made from appropriations terminating on dates other than June 30.

Subpart 4–4.52—Exchange or Sale of Personal Property and Application of Exchange Allowances or Proceeds of Sale to Purchase of Similar Items

§ 4–4.5200 Scope.

This subpart prescribes policies and procedures for disposal of personal property by exchange or sale when the exchange allowances or proceeds of sale are for application to the acquisition cost of similar items.

§ 4–4.5201 Policy.

The application of the exchange allowance or proceeds of sale in whole or part payment for property to be acquired is authorized only when (a) the items to be sold or exchanged are not excess, (b) they are similar to the items to be acquired within the definitions in 4–4.5209, (c) there has been at the time of exchange or sale (or at the time of acquisition if it precedes the sale) a written administrative determination to apply the exchange allowance or proceeds of sale to the cost of the items to be purchased, and (d) the transaction will foster economical and efficient accomplishment of program operations. (For exchange and transfers between agencies see 5 AR 605.)

§ 4–4.5202 Authority.

The authority to exchange or sell personal property and apply exchange allowances or proceeds of sale to the acquisition cost of similar items, is contained in Section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 81) and regulations issued by the General Services Administration.

§ 4–4.5203 Definitions.

(a) *Acquire.* "Acquire" means, procure, purchase, or obtain in any manner, including transfer, manufacture, or production at Government-owned or operated plants or facilities.

(b) *Combat material, personal property, and reserved materials.* (See 5 AR 615.)

(c) *Strategic and critical materials.* (See 5 AR 624.)

§ 4–4.5204 Use of GSA sales facilities.

When "exchange" property which is to be disposed of by sale, rather than by exchange, is located in a GSA region which has a Sales Service Program in operation, the procedure as prescribed in 5 AR 639 shall be followed.

§ 4–4.5205 Sale requirements.

When personal property is sold for the purpose of applying the proceeds of sale to the acquisition cost of similar items, such sales shall be in accordance with the applicable requirements of Section 3709, Revised Statutes, as amended, (41 U.S.C. 5). Accordingly, such property shall be disposed of by sale only after advertising a sufficient time previously for proposals; except that such sales may be made on an open market (negotiated) basis, without advertising, under the following circumstances:

(a) When the reasonable recovery value involved in any one case does not exceed $500.

(b) The property is such a hazard to health or property or will spoil or deteriorate so rapidly as to require immediate disposition.

(c) When it is clearly evident that there is only one sales outlet and the sales officer so certifies.

(d) When, after advertising, no acceptable bids have been received; provided that all responsible bidders who responded to the previous advertising shall be given an opportunity to respond to the request for open-market offers.

(e) When specifically authorized by the Administrator of General Services Administration.

(f) When otherwise authorized by law.

§ 4–4.5206 Advertising for bids.

(a) *Policy.* When advertising for bids for the disposal of exchange/sale property all prospective bidders shall be given free and open opportunity to submit either exchange (trade-in) or cash offers, or both, as they see fit unless the solicitation of exchange offers will serve no useful purpose. Invitations for bids soliciting exchange or cash offers shall not indicate by specification or otherwise, that preference will be given to an exchange offer over a cash offer or vice versa.

(b) *Invitation for bids.* Invitations soliciting bids for new items to replace similar items to be disposed of by exchange or sale which include a request for exchange (trade-in) allowances should fully describe the used property offered and state where it may be in-

spected by prospective bidders. Requests for cash offers for the used property may be made in the same invitation requesting bids on the new items or separately. The description of the property to be exchanged or sold for cash shall be shown clearly in the invitation for bids. All invitations requesting exchange or cash offers shall include the following notation:

This property is being offered in accordance with the exchange/sale provisions of the Federal Property and Administrative Services Act of 1949, as amended.

(1) *Items soliciting exchange allowances.* When an Invitation for Bids on new items includes a request for an exchange allowance offer, it is suggested that the exchange allowance item immediately follow the description, etc., of the new item and that appropriate space be provided for the exchange allowance offer. Also, there should be provided a space for the net cost of the new item, after deduction of the exchange allowance offered.

(2) *Items soliciting cash offers.* A suggested format for cash offer solicitations for inclusion in advertisements for new property, in which there is also included an item soliciting exchange allowances, is:

A cash offer, independent of any purchase of the new property, is also invited for the used property described above, the Government reserving the right to accept or reject any cash offer where the best interest of the Government would be served by such action. Dealers and others interested in making only a cash offer for the used property should make their offer under this item.

Cash price offered for the above described property $_____.

NOTE: It will be understood by all bidders offering exchange allowances and/or independent cash offers on the property described herein that such exchange allowances and/or independent cash offers are to be based upon said property being surrendered to the successful bidder in as good condition, normal wear and tear excepted, as at the time of inspection and appraisal; also that the Government reserves the right to use the old property until the new replacement property has been delivered and is ready for use.

(c) *Advertising and contract procedures.* The procedures applicable to advertised sales of surplus property shall also be applicable to advertised sales of exchange/sale property, except that the General Services Administration need not be notified of sales of exchange/sale property (see 5 AR 635.9 to 643, inclusive).

§ 4–4.5207 Open-market (negotiated) disposals.

The policy and procedure applicable to advertised bid disposals of exchange/sale property with regard to soliciting both exchange and cash offers, shall be followed in disposing of such property on an open-market basis. (See 5 AR 635.8 for detailed procedure on open-market (negotiated) sales.)

§ 4–4.5208 Exchange allowances and cash offers.

(a) *Solicitation.* Both exchange (trade-in) and cash offers shall be solicited in connection with property disposed of on an exchange/sale basis, except where:

(1) Recent solicitation for both exchange and cash offers on identical items has produced only one type of offer under circumstances indicating the futility of further solicitations for any other type of offer; or

(2) Solicitation of both types of offers for the items to be replaced would be plainly ineffective in reducing the cost of the acquisition, e.g., by reason of existing commercial practice (tests of which should be made at reasonable intervals) with respect to exchange or sale of such items.

(3) Sales are made by GSA under a sales service program as provided in 5 AR 639.

(b) *Acceptance.* When both cash and exchange offers are obtained, only the offer or combination of offers resulting in the lowest net cost of the property being purchased shall be accepted.

§ 4–4.5209 Similarity of items for exchange/sale purposes.

Items shall be deemed to be similar when:

(a) Both fall within any one of the categories listed in Exhibit 4–4.5216, or when not falling within such categories the item to be acquired is designed and constructed for the same specific purpose as the item to be replaced.

(b) Both constitute containers for items designed and constructed for the same specific purposes.

(c) Both constitute parts for items which are similar within the meaning of (a) above.

§ 4–4.5210 Exchange or sale of more than one item.

Items disposed of on an exchange/sale basis need not be the same in number as the items acquired. Neither need the items acquired be used in the same locations as the items sold or exchanged. However, except for parts or containers, the newly acquired items must be used (whether or not intended for additional uses) in the performance of all or substantially all of the tasks or operations in which the items exchanged or sold would otherwise be used.

§ 4–4.5211 Application of exchange allowance and proceeds of sales.

As a general rule, exchange allowances for, or proceeds of sales of, any item exchanged, sold or transferred under this regulation shall be applied to the acquisition cost. That is, when such property is exchanged, the appropriation shall be charged only the excess of the price of the property acquired over the trade-in allowance for the property exchanged, and when such property is sold or transferred in acquiring similar property, the proceeds of the sale or transfer shall be deposited (a) as a direct reimbursement credit to the appropriation chargeable, if obligation for the replacement has been incurred, or (b) if the obligation has not been incurred, in the Treasury to the credit of the agency's deposit fund account, and shall be used as provided in 7 AR 154. Proceeds of sales of property for which an obligation for replacement has not been incurred during the period of availability, as defined in § 4–4.5212, or sales proceeds which for other reasons the agency elects not to apply to replacement costs shall be deposited to miscellaneous receipts. (See also 5 AR 605 relative to exchange between agencies.)

§ 4–4.5212 Availability of proceeds of sales.

Except as otherwise specifically authorized, all funds obtained from the sale of property will be available during the fiscal year in which the sale is made and for one fiscal year thereafter for obligation for the purchase of similar replacement items. When such disposal is to be effected by the General Services Administration, the owning agency should identify the accountable officer by name, station and symbol, and indicate the symbol of the appropriation to be credited with the proceeds of sale on the requisition or other procurement or disposal submitted to the GSA.

§ 4–4.5213 Limitations.

The regulations of the General Services Administrator authorizing exchange or sale and application of the proceeds to the acquisition of similar items do not authorize:

(a) The acquisition of property when such acquisition is not otherwise authorized by law:

(b) The acquisition of property in contravention of (1) any restriction upon the procurement of a commodity or commodities, or (2) any replacement policy or standard prescribed by the President, the Congress, the Administrator of General Services pursuant to the Act, or by regulations of this Department;

(c) The purchase or acquisition of property otherwise than under a consolidated purchasing or stores program or Federal Supply Schedule contract when procurement under such program or contract is required by regulations of the General Services Administrator: *Provided,* That in acquiring items under such a program or contract, similar items may be exchanged or sold and the exchange allowance or sales proceeds applied as provided herein;

(d) The sale, transfer, or exchange of strategic or critical materials, unless such materials at any one location are in lots of less than 50 percent of the minimum quantities specified in 5 AR 624 and the agency determines that there is no reasonable prospect of accumulating, within 12 months, 50 percent of such minimum quantities;

(e) The sale, transfer, or exchange of reserved materials, except in accordance with applicable regulations of the Atomic Energy Commission (see 10 CFR Part 40, as amended; 14 F.R. 1156);

(f) The sale, transfer, or exchange of narcotics, except in accordance with 5 AR 621c(3);

(g) The sale of property in new or unused condition in connection with the purchase or acquisition of similar property NOTE: This does not preclude the trade-in of such property);

(h) The sale, transfer, or exchange of scrap in connection with the purchase or acquisition of property. (See 5 AR 615z);

(i) The sale or exchange of property which is dangerous to public health or safety, unless it is first rendered innocuous or adequate safeguards are provided therefore;

(j) The sale or exchange of combat material, unless it is first demilitarized as provided in 5 AR 625.5; or

(k) The sale, transfer, or exchange of excess or surplus property (as defined in 5 AR 615) in connection with the purchase or other acquisition of similar property: *Provided*, That agencies obtaining items of excess or surplus property may thereafter exchange or sell such items as provided herein.

§ 4–4.5214 Exceptions.

(a) *General.* Items falling within the following categories shall not be eligible for handling under the provisions of this subpart:

Hand tools.
Hardware—general purpose.
Millwork, plywood and veneer lumber.
Furniture—office, household and quarters, hospital, shipboard, and cafeteria located in the United States, its territories and possessions.
Office supplies.
Wearing apparel.

(b) *Books and periodicals.* Notwithstanding any other provisions of this subpart, library books and periodicals not needed for permanent use may be exchanged, without monetary appraisal or detailed listing or reporting, for other books and periodicals.

§ 4–4.5215 Records.

Acquisition, sale, and exchange documents involved in any transaction hereunder shall be adequately cross-referenced or sufficient data provided with payment and collection documents to establish that the items acquired are similar to the items exchanged or sold, that any exchange allowances or proceeds of sale involved in the transaction were in fact available for such application; that a written administrative determination to apply the exchange allowances or proceeds of sale in acquiring the property has been made; and that the transaction was otherwise in accordance with the provisions of this section.

§ 4–4.5216 Exchange/sale categories.

In the acquisition, exchange, or sale of property in the categories below, both the item to be acquired and the item to be replaced must fall within a single numbered category.[1]

1. Agriculture products, processed foods and forage.
2. Air conditioning units, office and residential.
3. Air conditioning units, industrial.
4. Ambulances, all sizes.
5. Ammunition and ammunition components.
6. Animals and animal products.
7. Asphalt distributors.
8. Asphalt pavers, portable or road mix.
9. Batteries, storage.
10. Bicycles; tricycles.
11. Binoculars; field glasses; telescopes.
12. Boilers, steam.
13. Busses, all sizes.
14. Cards, tabulating.
15. Compressors, air, portable.
16. Compressors, air, stationary.
17. Crawler, wheel mounted, and railroad cranes (including shovels and drag lines).
18. Crane trucks, industrial warehouse, electric and gasoline powered.
19. Ditching machines.
20. Dozer blades.
21. Drill presses.
22. Earth augers.
23. Fans, electric.
24. Graders, self-powered and towed.
25. Lathes.
26. Machines, adding; machines, calculating.
27. Machines, addressing and mailing.
28. Machines, dictating and transcribing.
29. Machines, duplicating.
30. Machines, punched card, bookkeeping, tabulating and accounting.
31. Milling machines.
32. Mixers, concrete, portable or truck mounted.
33. Motor scooters.
34. Motorcycles with or without side car.
35. Mowers, lawn, power.
36. Pile drivers.
37. Polishers, floor, powered.
38. Pontoon, assemblies.
39. Power shovels.
40. Railroad cars, freight.
41. Railroad cars, passenger.
42. Railroad cars, service.
43. Railroad locomotives.
44. Refrigeration equipment.
45. Refrigerators.
46. Road rollers, wheeled and sheepsfoot.
47. Saws, bench.
48. Scrapers, earth moving (self-powered).
49. Scrapers, earth moving, towed.
50. Sedans; station wagons, coupes; limousines.
51. Snow plows, motorized.
52. Spreaders, aggregate and lime.
53. Tractors, warehouse.
54. Tractors, wheeled or crawler, with or without special attachments, up to 65 h.p.[1]
55. Tractors, wheeled or crawler, with or without special attachments, 65 h.p. and up.[1]
56. Trailers, general purpose, multiple axle.
57. Trailers, general purpose, single axle.
58. Trailers, industrial.
59. Trailers, special purpose (including fire pumper and Bean type sprayer and crash trailer).
60. Trailers, tank mounted.
61. Trucks, electronic.
62. Trucks, fire.
63. Trucks, fork lift.
64. Trucks, general purpose, cargo and construction, 12,500 GVW through 28,000 GVW (including truck tractors, dump, multiple drive, etc.).[1]
65. Trucks, general purpose and utility up to 12,500 GVW (including suburbans, carryalls and sedan deliveries).[1]
66. Trucks, straddle.
67. Trucks, tank (special purpose trailer of which the tank is an integral part of the construction).
68. Trucks, warehouse, platform, electric and gasoline powered.
69. Typewriters, manual and electric.

[1] Pursuant to special authority granted the Department by letter of August 29, 1955 from the Administrator, GSA, agencies may employ an overlap of (1) not more than 25 h.p. between the "Tractors" categories 54 and 55, and (2) not more than 4,000 GVW between the "Trucks" categories 64 and 65 provided the item being acquired is to be used for the same purpose as the items being replaced. In any instance where this authority is used, a statement shall be placed in the files showing that the transaction is in accord with the above authority and proviso.

[1] See footnote on preceding page.

Subpart 4–4.53—Procurement of Construction

§ 4–4.5300 Scope of subpart.

This subpart states the policies and procedures to be followed in contracting for the construction of or alteration to public buildings and/or public works.

§ 4–4.5301 Invitation for bids.

§ 4–4.5301–1 Forms.

Subpart 1–16.4 prescribes standard forms required to be used in accordance with said subpart.

§ 4–4.5301–2 Bid guarantee.

See § 1–10.102.

§ 4–4.5301–3 Specifications.

(a) *Preparation.* General principles for the preparation of specifications are stated in §§ 1–1.305 and 1–1.307. Specifications for construction contracts are usually prepared in three parts as described in this section although in small contracts they may be combined if appropriate. These specifications generally include only the technical details of the construction contract with administrative provisions being included in the "Special Conditions." Federal specifications are required to be used whenever applicable. The following is suggested as a guide in arranging the specifications for a construction contract:

(1) *General requirements.* These are the specification requirements of a general nature that apply to all items of construction listed in the contract specifications. When an agency is engaged in a regular program of construction, they are usually prepared as standard requirements for all similar construction. General requirements include such items as:

(i) Definitions.
(ii) Interpretations of quantities in bid schedule.
(iii) Control of work and material.
(iv) Scheduling prosecution and progress of work.
(v) Measurement and payment for work.
(vi) Removal of structures and obstructions.
(vii) Final cleaning up, etc.

(2) *Construction details.* These are the technical specifications for each item listed in the Schedule of Items of the bid invitation and contract. Such construction details should be titled and numbered exactly as the item is to appear in the schedule of items and include the following:

(i) Description of the item of construction.
(ii) Construction methods.
(iii) Method of measurement.
(iv) Basis of payment.

(3) *Supplemental specifications.* When an agency is engaged in a regular program of construction, it is the usual practice to prepare the general requirements and construction details as standard specifications for all recurring construction work. Such standard specifications are usually reproduced in quantity for attachment as necessary to the invitation for bids and contract. For each contract, however, there may be peculiarities of construction that require either deviation from the standard specifications or additions thereto. These are ordinarily included in an attachment called "Supplemental Specifications" which, as the term implies, supplement the standard specifications. Provision should be made in the "General Requirements" that where there is a conflict between the supplemental specifications and other contract specifications, that the supplemental specifications shall govern.

(b) *Identification.* The invitation for bids and contract should clearly identify each page of the specifications by title and inclusive page or paragraph numbers as appropriate.

§ 4–4.5301–4 Plans and drawings.

Plans and drawings should be clearly identifiable by sheet numbers and titles and be so identified in the bid invitation and contract. For general information regarding building codes and standards of design, see Title 4, Administrative Regulations, chapter 2.

§ 4–4.5301–5 Schedule of items.

When a single bid price is required, it should be made clear to the bidder that the price is to be entered in the space provided on the Standard Bid Forms. However, in most instances prices may be desired for each integral portion of the job. In such event, bidders should be referred to a "Schedule of Items" which will be attached to and made a part of the bid invitation papers by appropriate reference. The schedule of items on which the bidder inserts his bid is prepared by tabulating the items of work correlated with exact item numbers and titles of work descriptions contained in the "Construction Details" of the specifications and showing the estimated quantity of each item of work in a form that will permit the contractor to prepare his bid. The schedule of items or general provisions shall state definitely whether award is on an individual item basis or on an "all or none" basis. When Standard Forms 23 and 23A are to be used for the contract, the schedule of items should be prepared as a separate attachment to the invitation for bids to that it may be easily copied and made a part of the contract.

§ 4–4.5301–6 Special conditions.

This section of the invitation for bids and contract for construction should include those conditions which supplement the general provisions of Standard Contract Forms. Special conditions generally include such items as:

(a) Time for completion of work.
(b) Rates of wages.
(c) Bond requirements.
(d) Liquidated damages.
(e) Subcontracting.
(f) Designation of contracting officer's representative, etc.

§ 4–4.5301–7 Liquidated damages.

The general policy with regard to the use of liquidated damages provisions in contracts, including construction, is stated in § 1–1.315. Liquidated damages provisions for construction contracts are contained in the "Termination for Default—Damages for Delay—Time Extensions" clauses of the Standard Contract Forms. See also § 1–8.709.

§ 4–4.5301–8 Rates of wages.

(a) *Davis-Bacon Act applicability.* The Davis-Bacon Act (40 U.S.C. 276a) requires that the advertised specifications for every contract in excess of $2,000 for the construction, alteration or repair of public buildings or works, including painting or decorating buildings, shall contain a provision stating the minimum wages and fringe benefits to be paid laborers and mechanics. Applicability of the provisions of the Davis-Bacon law is dependent upon the actual contract price and not upon estimates as to whether the contract work is in excess of $2,000, the statutory minimum, and even though said provisions were included in a contract where the price is less, there is no requirement for compliance therewith, because public officers do not have legal authority to include provisions contrary to law (see 18 Comp. Gen. 394). Whenever it is believed the contract amount may exceed $2,000, provision should be made in the invitation for bids for compliance with the Act. The labor standards provisions of Standard Form 19A are sufficient to require such compliance.

(b) *Requesting wage determinations.* Agencies shall request wage determinations by submitting to the Solicitor of Labor, United States Department of Labor, Washington, D.C., 20210, in accordance with section 5.3 of the Regulations a completed Department of Labor Form DB–11. These forms are available from Central Supply Section. Requests for wage determinations shall be initiated at least 30 calendar days before advertisement of the specifications or the beginning of negotiations for the contract for which the determinations are sought. The Department of Labor has indicated that exceptions to this requirement will be made only upon a proper showing of need in the unusual cases.

(c) *Inclusion of rates in specifications.* Minimum wage rates thus obtained shall be included in the advertised specifications and shall precede the following paragraph:

> Any class of laborers and mechanics not listed in the preceding paragraphs which will be employed on this contract, shall be classified or reclassified conformably to the foregoing schedule. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for final determination.

(d) *Use of wage determinations.* Wage determinations expire 120 days after the date thereof, and may not be incorporated in contracts awarded thereafter, unless extended in accordance with section 5.4a of the Regulations of the Secretary of Labor. In the absence of language in the invitation for bids to the contrary, a bid may not be accepted on the basis of wage rates different in any respect from those specified in the invitation. However, provision may be made in the invitation that if the wage deter-

mination expires after opening of the bids and prior to award, a current determination by the Secretary of Labor will be incorporated in the contract, pursuant to the "Changes" clause of the contract provisions. All actions by the Secretary of Labor changing or modifying original wage determinations prior to the award of the contract shall be applicable thereto, except that modifications received by the agency later than 10 days before the opening of bids shall not be effective.

(e) *Apprentice wage rates.* Department of Labor regulations require that invitations to bid on construction contracts in excess of $2,000 include the provision regarding employment of apprentices, Article 3 of Standard Form 19A. It is not necessary to specifically request apprentice wage rates since the Department of Labor will automatically add wage rates for apprentices to the Department's application for wage rates for the various crafts, when such are on file. When a contractor proposes to employ apprentices for whom wage rates have not been stated in the proposed contract, requests for approval of the wage rates should be submitted through channels to the Department of Labor.

§ 4–4.5301–9 Nonrebate of wages—Copeland Act.

The Copeland Act, also known as the "Kick-Back Act" (18 U.S.C. 874) makes it unlawful to prevent anyone employed in the construction, alteration, or repair of buildings or works financed in whole or in part by the United States from receiving the rates of pay legally due. This Act, unlike the Davis-Bacon Act, applies regardless of the contract amount. (See 19 Comp. Gen. 576) The necessary contract provision is stated in Clause 5 of Standard Form 19A. (See § 1–16.901–19A.) See Subpart 1–12.1 for instructions to be given contractors and requirements for administration of this contract provision.

§ 4–4.5301–10 Contract Work Hours Standards Act.

This Act relates to the eight-hour day, 40-hour week, overtime compensation of laborers and mechanics employed by contractors. The required contract clause is stated in § 1–12.403–1.

§ 4–4.5301–11 Buy American Act.

Except for contracts to be executed on Standard Form 19, invitations for bids and requests for proposals for affected construction work shall contain the provision stated in § 1–6.204 and the contract clause stated in § 1–6.205.

§ 4–4.5301–12 Price adjustment for suspension, delay, or interruption of work.

Whenever it is considered necessary to provide for administrative relief for unreasonable periods of delay caused by the contracting officer in the administration of the contract, prior approval of the Director of Plant and Operations shall be obtained to the use of the clause stated in § 1–7.602–1 or similar provision.

§ 4–4.5302 Selection of bidders.

(a) *Selection.* When information is available in advance of bid solicitation, invitations for bids should be sent only to those prospective bidders who are considered responsible and competent to perform the work required by the bid specifications. Unless debarred or suspended, however, no bidder may be refused an opportunity to bid.

(b) *Mailing lists of prospective bidders.* Those agencies regularly engaged in construction work should assemble a list of prospective bidders classified by specialties, bonding capacity and location of operations. The State Office of the Associated General Contractors of America, Inc., is an excellent source of help in contacting and listing contractors, and in most cases information on equipment ownership, financial standing and general reputation can be secured. When information concerning qualifications of bidders is desired, forms entitled "Experience Questionnaire", "Plan and Equipment Questionnaire", and "Contractor's Financial Statement", should be used to secure this data from the prospective bidder. These forms are available from the Office of Plant and Operations.

§ 4–4.5303 Time allowed for submission of bids.

The same principles apply to bids on construction as to other types of bids. The facts of each particular case will govern the amount of time that should be allowed for bidders to prepare and submit bids. Generally, the following factors are for consideration: (a) are prospective bidders to receive complete plans, drawings, specifications, and bidding forms immediately or must they, after noting published or circularized notices, request the necessary papers, (b) the length of time required for mail to reach the most distant prospective bidder and return, (c) will bidders need bids from material men, plumbers, and other subcontractors and, if so, how much time will they require for such purpose, and (d) magnitude of the job to be performed.

§ 4–4.5304 Deposit or payment for plans, drawings, and specifications.

Plans, drawings, and specifications consisting of more than a few sheets are quite expensive; therefore, casual requests should be discouraged. Requiring deposit or payment serves to limit the requests to those firms who have an interest in bidding or as subcontractors. When a deposit is required, the amount of the deposit should not be in excess of the cost of preparation but yet should be kept high enough to discourage promiscuous requests. The bookkeeping required in setting up an account to handle deposits and make refunds may prove burdensome; therefore, an arrangement whereby one set of plans, drawings, and specifications is furnished free of charge to prime contractors and additional sets are furnished on a sale basis only, is one way of alleviating the situation. (The successful bidder will be furnished with as many sets of plans, drawings, and specifications as may be necessary for the job or a reasonable number of sets without charge.) One complete set should be displayed in the office issuing the invitation and be made available for inspection by any interested parties. When this method is employed, the following language should appear in the "Notice to Prospective Bidders":

> One set of plans, drawings, and specifications will be furnished free, upon application therefor, to general contractors only who can quote on the entire job as required. Additional copies are otherwise available at $---- per set. Plans, drawings, and specifications will be on display for examination by interested parties at ----------.

§ 4–4.5305 Notices to prospective bidders.

Where it is impractical to provide plans, drawings, and specifications with the invitation for bids, prospective bidders should be notified of the proposed job by means of a "Notice to Prospective Bidders" containing the following information: (a) Location of the work, (b) nature of the work (this should reflect the magnitude of the job and the trades involved), (c) form of contract to be required, (d) bonds required, (e) where to obtain plans, drawings, specifications, and bidding forms, (f) amount of deposit or purchase cost to obtain plans, drawings, and specifications, (g) time and place of opening of bids, and (h) the invitation number assigned. Standard Form 20 may be used for this notice or it may be otherwise prepared.

§ 4–4.5306 Receiving and opening bids.

Procedures to be followed in the receipt and opening of bids in connection with supply contracts are applicable to those for construction. (See Subpart 1–2.4.) However, in the case of larger construction contracts, there is usually intense interest by bidders, bonding companies, subcontractors, etc. Therefore, it may be desirable to provide special facilities for those attending the bid opening such as bid tabulation sheets, etc. Engineers' cost estimates are administratively confidential and are not to be revealed until after the bids have been opened and read.

§ 4–4.5307 Analyses of bids.

Methods to be followed in the analysis of bids on construction are the same as those for other types of contracts. (See Subpart 1–2.4.) Particular care should be taken in analyzing bids for construction work to assure the sufficiency of the bid bond, determine that the low bidder is responsible and qualified to perform the work, that the bid price is reasonable by comparison to the agency cost estimate, that the unit price bid for each schedule item is reasonable and not "weighted," and that no exceptions to the bid specifications are taken by the bidder. When there is any doubt as to the bidder's financial ability or experience qualifications, the bidder's bonding company, bank, state office of Associated General Contractors, Small Business Administration (see § 1–1.708–2), and previous contract employers should be contacted. Bonding companies, particularly, are helpful in resolving questions in this area. Rejection because of insufficient financial ability or experience qualifications should be supported by the opinion of those contacted as above.

§ 4–4.5308 Preparation of Standard Form 19.

See §§ 1–16.402–4 and 1–16.901–19.

§ 4–4.5309 Preparation of Standard Form 23.

See § 4–16.402–3(d).

§ 4–4.5310 Notice of contract award.

(a) *Availability of funds.* Prior to award of the contract or any subsequent change therein, the contracting officer must have written assurance that sufficient funds are available within the current allotment and that they are reserved for the proposed action.

(b) *Wage rate determinations.* Notice of award must be given within 120 days from the date of the original wage determination or new wage determinations obtained and made a part of the contract before it is awarded unless the determination is extended in accordance with section 5.4a of the regulations of the Secretary of Labor.

(c) *Instructions regarding labor provisions.* (1) Upon award of the contract the successful bidder shall be furnished with a copy of Form AD–372, "Regulations Applicable to Contracts Covering Federally Financed and Assisted Construction and Other Contracts Subject to the Contract Work Hours Standards Act." Form AD–372 is available from the Central Supply Section.

(2) The contractor's attention should particularly be called to the requirement for submission of weekly payrolls and statements with respect to payment of wages. If there is a representative of the contracting officer on the site of the job, responsibility for securing these documents may be delegated to him; otherwise the contractor should be required to mail them direct to the contracting officer.

(d) *Equal opportunity provision.* Upon award of the contract, the contractor shall be furnished posters and directions for their use in accordance with subpart 4–12.8.

(e) *Notice of award.* The contractor should be formally notified by letter or other written notice, and requested to furnish performance and payment bonds and to return a copy of the contract properly signed. Upon receipt of properly executed bonds and contract, two copies of the contract, containing all pertinent papers and signed by the contracting officer should be furnished to the contractor, together with instructions regarding labor provisions of the contract; provision for schedule of work, etc.; and any other pertinent advice, such as the name of the authorized representative of the contracting officer.

(f) *Award notice to Commerce Department.* Department of Commerce Form 16–19, Construction Contract Award Notification, is a self-addressed postcard type of form and is to be used for reporting to the Department of Commerce construction contract awards over $25,000 financed from Federal funds, except where other arrangements for reporting have been made with the Department of Commerce for certain agency programs. Copies of Form 16–19 may be obtained from the Central Supply Section.

§ 4–4.5311 Performance and payment bonds.

When performance and payment bonds are received, they should be administratively approved as to form and sufficiency by the contracting officer. See § 4–10.152 for instructions on approval and filing of bonds.

§ 4–4.5312 Notice to proceed.

When the contract is returned by the contractor, it should be checked for appropriate signatures. Upon approval of the contract and bonds by the contracting officer, the notice to proceed should be issued as provided in the contract. Ordinarily, this will be by letter directing the contractor to proceed with the work within the period of time after date of receipt of the notice to proceed, as stated in the contract. This notice should be sent by registered or certified mail with return receipt in order to determine the starting date of contract time.

§ 4–4.5313 Changes in construction contracts.

(a) *Contract provision.* In accordance with Clause 3 of Standard Form 23A and Clause 1 of Standard Form 19, the contracting officer may at any time, by a written order, make changes in the drawings and/or specifications of the contract, if within the general scope thereof.

(b) *Determination of contract adjustment.* If changes cause an increase or decrease in the contractor's cost of, or in the time required for, performance of the contract, an equitable adjustment in the amount to be paid the contractor and/or in the time of performance shall be made by the contracting officer in accordance with § 4–4.5317.

(c) *Change order.* The change shall be made by means of a written change order which may be by letter or on agency forms. The order shall cite the changes clause of the contract as the basis and authority for ordering the change. As a general rule, the order setting forth the changed work and the adjustment in price and/or time should be issued before commencement of the changed work. Only where time is not available and the changed work must proceed without delay may the change be initiated by a "two-part" change order. Part I will then be issued, setting forth the scope of the change, stating that the contractor is to proceed with the work as changed and that adjustments in contract price and/or time will be made at an early date. Part II would be issued as soon as adequate data is developed to enable making the equitable adjustment. Provision should also be made for receipt and acceptance of the change order(s) by the contractor, including his agreement to the adjustment in contract price and/or time specified therein. No conditions shall be extended by the contracting officer for nonacceptance, such as withholding of otherwise due payments, agreements on items in dispute, etc, Failure to agree on terms of the change shall be handled as a dispute. Prior to issuance of a change order increasing the contract amount, the contracting officer must have written assurance that funds are available and reserved for the proposed action. Also, the surety should be advised of the change, although this is not required by the contract terms.

(d) *Authorized changes.* The cited contract provision provides authority to make changes in the drawings and/or specifications of the contract if within the general scope thereof. This clearly includes any structural changes to the total work which can be said to have been fairly and reasonably within the contemplation of the parties at the time the contract was made. It includes nonstructural changes necessary to carry on the work such as changes in sequence of operations, acceleration of work, changes in Government furnished materials, inclusion of corrected wage rates, correction of errors by the Government, etc. Consequential damages cannot be adjusted as a change hereunder.

(e) *Constructive changes.* While the language of the changes provision requires that a change be ordered in writing, certain actions by contracting officials, even though not intended to constitute a change, may be held to do so. For example, the contractor may be entitled to an adjustment of the contract where the Government (1) erroneously interprets a contract and makes the contractor do something the contract does not require, (2) orders work done in a particular manner thereby depriving the contractor of use of an alternative method, or (3) requires acceleration of performance beyond that necessary to perform the contract within the contract performance time, or refuses to give an extension of time where one is due. However, where the contractor has acted as a mere volunteer and has performed work beyond the requirements of the contract without direction, written or oral, he shall not be afforded relief under the changes provision.

(f) *Timeliness.* Contract performance may be suspended or delayed by the contracting officer for a reasonable time, where necessary to work out the details of a proposed change and issue a change order. What is a reasonable time depends upon the extent of the change and other material circumstances. In any event, the contracting officer should proceed with contract changes, and adjustments thereunder, in a manner calculated to minimize any adverse effect on the contractor. To do otherwise is to invite damage claims for unreasonable delay which, in the absence of a contract provision authorizing pay for delay, could not be administratively settled. See § 4–4.5301–12 on price adjustment for delay.

(g) *Disputes.* If the contractor does not agree with the adjustment in the change order, he must nonetheless proceed with the prosecution of the work as ordered. He is allowed a period of 30 days from the date of receipt of the change order by the changes provision of the contract within which to claim further adjustment. However, if the contracting officer determines that the facts justify such action, i.e., that the

delay is not prejudicial to the government, and evidence is available to determine the merits of the claim, he may consider and adjust any such claim if asserted at any time prior to the date of final payment under the contract. Upon receipt of such a claim, the contracting officer shall consider the facts and make whatever further adjustment in the contract is justified in accordance with the procedures for equitable adjustments stated in § 4–4.5317.

§ 4–4.5314 Changed conditions in construction contracts.

(a) *Contract provisions.* Clause 4 of Standard Form 23A provides that the contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of (1) subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract. Similar language appears in Clause 1 of Standard Form 19. These standard forms provide that if such conditions cause an increase in the cost of, or in the time required for, performance of the contract, an equitable adjustment in the amount to be paid the contractor and/or in the time of performance shall be made by the contracting officer, unless the contractor fails to give the required notice and the contracting officer does not consider waiver of the notice to be justified.

(b) *What constitutes a changed condition*—(1) *Misrepresented conditions.* The first category of conditions cognizable under the changed conditions clause is those physical conditions differing materially from that indicated by the invitation and contract, including all plans, drawings, specifications, logs, charts, and other parts thereof. If the Government intentionally or unintentionally misrepresented what had been found in the course of its site investigative work, or otherwise, or withheld pertinent information which could have had a substantial bearing on the contractor's bid calculations and the contractor was therefore damaged through his reasonable reliance upon the information provided by the Government, he is entitled to an equitable adjustment. In such a case, the usual contract clauses warning the bidder to inspect the site, and at the same time disclaiming responsibility of the Government for inaccuracy of information supplied, are insufficient to overcome the Government's failure to supply available, accurate information. On the other hand, if the Government shows fairly, honestly and completely what it has found, the fact that what it does show may not be representative of the conditions later found to exist will not enable the contractor to be relieved because of misrepresentation.

(2) *Unanticipated conditions.* This category of conditions includes those existing at the time the contract was made which were unknown to both parties, and of such unusual nature that a competent contractor would not have anticipated their presence under the circumstances. Relief does not depend upon a comparison of the conditions found with the contract documents, but rather on whether the actual conditions encountered do differ substantially from what a contractor should reasonably have expected, based not only upon the information furnished by the Government, but also upon the conclusions which would reasonably be drawn from generally known conditions of the surrounding area and the nature of the job to be done. Statements in the invitation that the contractor is responsible for informing himself of conditions at the site, or that disclaim responsibility of the Government for unknown conditions cannot detract from the right given the contractor by the Changed Conditions Clause to an equitable adjustment if he encounters conditions which he could not reasonably be expected to have foreseen under the circumstances. However, if the bidder is given an opportunity to inspect the site and fails to do so, he can not obtain relief on the basis of ignorance of conditions of which he could have been warned by a thorough visual inspection. Unusual weather conditions are not considered changed physical conditions within the meaning of this clause.

(c) *Determination of contract adjustment.* Upon receipt of notice of a changed condition from the contractor, the contracting officer shall promptly investigate the conditions and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of the contract, he shall determine and make an equitable adjustment as provided in § 4–4.5017(b). No claim for adjustment shall be allowed unless the contractor has given written notice of the changed conditions prior to their being disturbed, unless the Government actually knew of the conditions, or where its interests were not prejudiced by failure to give notice at the time required, or where evidence is available to establish the merits of the claim.

(d) *Disputes.* If the contractor does not agree with the adjustment made by the contracting officer, he may so notify the contracting officer, who then shall prepare a finding of fact and make a decision, as provided in § 4–50.104. In accordance with the contract Disputes Clause, the contractor may appeal from the decision of the contracting officer within 30 days from the date of receipt thereof.

(e) *Contract provisions for estimated quantities.* (1) Where quantities of items, such as earth excavation, rock removal, etc., are estimated, consideration should be given to including in the contract a special provision establishing the point at which overruns or underruns of such estimated quantities shall be considered as entitling the Government or the contractor to an equitable adjustment in the contract price. The following language is prescribed for such a provision:

QUANTITY VARIATIONS

(a) Where the quantity of work shown for an item in the bid schedule, including any modification thereof, is estimated, no adjustment of the contract price nor of the performance time shall be made for overruns or underruns which are within twenty-five (25) percent of the estimated quantity of any such item.

(b) For overruns of more than twenty-five (25) percent, the Contracting Officer shall re-estimate the quantity for the item, establish an equitable contract price for the overrun of more than twenty-five (25) percent, adjust contract performance time equitably, and modify the contract in writing accordingly; this clause to thereafter be applicable to the total re-estimated item quantity.

(c) For underruns of more than twenty-five (25) percent, the Contracting Officer shall determine the quantity for the item, establish an equitable contract price therefor, adjust contract performance time equitably, and modify the contract in writing accordingly.

Additional language may be included limiting application of the provision to major items in the contract.

§ 4–4.5315 Work orders.

The term "work orders" is used for a variety of actions which are within the general scope of the contract, but which do not increase or decrease the amount due under the contract or the time required for its performance. Any situation involving a "Change" or "Changed Conditions", as described in §§ 4–4.5313 and 4–4.5314, requires a change order signed by the contracting officer whether or not there is a change in the contract amount or time of performance. Work orders would be used for any situation where it is advisable to direct the contractor in writing to fulfill some contract requirement in a specific way, such as when he ignores verbal directions, or to order performance of work for which a contingent sum is set up in the schedule of items of work and which is not covered by the notice to proceed, or to establish specifications for portions of work which the contract provides shall be at the direction of the engineer, etc. Work orders are a part of the official actions under a contract and as such are to be retained as a part of the contract file.

§ 4–4.5316 Amendment.

All changes in contract work within the general scope contemplated by the contract will be ordered by change orders. When additional work outside the scope of the contract is required, and it is determined that the contractor is the only reasonable source, such additional work may be included in the contract by an amendment in the form of a supplemental agreement which must be signed by the contractor. The contract file must contain a statement adequately supporting the execution of the agreement as being within the exceptions to the statutory advertising requirements.

§ 4–4.5317 Equitable adjustment.

(a) *Authority.* The standard contract clauses such as for "Changes", "Changed Conditions", "Disputes", etc., provide for the making of equitable adjustments in contract price and time.

(b) *Determination.* The method of determining the equitable adjustment varies, dependent upon whether work is, or is to be, completed, and upon the adequacy of contractor's accounts, the nature of the work, etc. While rigid rules applicable to all circumstances cannot be given, these are some rules of general application:

(1) The costs that will be reasonably experienced by the contractor should be used. The costs of a more experienced company should not be used as a standard.

(2) No allowance or provision may be made for any increase in the cost of work not changed (unless the contract specifically provides therefor). Those costs which flow solely and naturally and according to the usual course of things as the result of a change may be allowed—any other costs would be consequential in nature for which the contract does not provide an administrative remedy. Costs attributable to delay may not be included unless authorized by a contract provision pursuant to § 4–4.5301–12.

(3) Profit is allowable unless the contract provision specifically limits recovery to costs. However, anticipated profit on work deleted may not be included.

(4) Adjustments may be based on fair and reasonable approximations of the costs made by experts.

(5) The mere difference between the originally estimated cost of performance and the actual cost of performing changed work is not of itself an acceptable basis for making the adjustment. What would be reasonable costs of performing the work must be determined.

(6) Adjustments in both time and price should be made concurrently. Any adjustment in contract time is a recognition that cost of performance may be subject to adjustment.

(7) The cost principles of Subpart 1–15.4 shall be used as a guide in determining allowable costs.

(c) *Documentation.* The final determination of an equitable adjustment, including the basis therefor, must be in writing. Agreement thereto in writing by the contractor must be obtained when the contract requires such agreement. Documented agreement is desirable in any case.

(d) *Disputes.* Failure to agree upon an adjustment in the contract shall be settled in accordance with procedures stated in Subpart 4–50–2.

§4–4.5318 Work progress reports and invoices.

As a minimum, the contracting officer should be advised once each month as to the progress of construction work in such terms as to enable him to judge whether satisfactory progress under the contract is being obtained. The work progress report may be in the form of an estimate of work accomplished under each item which, if in appropriate detail, may be used by the contractor as his invoice.

§ 4–4.5319 Extension of contract time.

Extension of contract time may be authorized only when contract general provisions (such as clauses 3, 4 and/or 5 of SF–23A) provide specific authority therefor. When an extension of contract time is requested because of delays due to causes as specified in the contract, the contracting officer shall ascertain the facts and prepare and furnish to the contractor a report of his findings and decision. (See § 1–8.602–3.)

PART 4–5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

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4–5.302 Policy.

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4–5.5402–1 Authority.
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Subpart 4–5.55—Military Petroleum Supply Agency

4–5.5500 General.

Subpart 4–5.56—National Industries for the Blind

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4–5.5602 Committee on purchases of blind-made products.
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4–5.5604 Schedule of Blind-Made Products.
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4–5.5606 Acquisition from GSA stores depots.
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4–5.5608 Procedure when similar products are made by Federal Prison Industries, Inc.

Subpart 4–5.57—Office of Plant and Operations

4–5.5701 Central Supply Section.
4–5.5701–1 Authority.
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Subpart 4–5.57—Office of Plant and Operations

4–5.5702 Departmental contracts.
4–5.5703 Contracting in Washington, D.C.
4–5.5703–1 General.
4–5.5703–2 Preparation of invitations for bids.
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4–5.5703–4 Solicitation of bids in the field and awards in Washington.
4–5.5703–5 Contract administration.

Subpart 4–5.58—Purchase From Government Agencies Under Section 601 of the Economy Act

4–5.5801 Authority.
4–5.5802 Placing orders.
4–5.5803 Participation in extra-departmental contracts.

AUTHORITY: The provisions of this Part 4–5 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–5.3—Excess Personal Property

§ 4–5.302 Policy.

In order to comply with the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483), and such regulations as have been issued pursuant thereto by the General Services Administration, it is the policy of the Department to utilize Federal excess personal property whenever practicable in lieu of procurement of new property from commercial sources. (See 5 AR 622.)

Subpart 4–5.50—Agricultural Research Center

§ 4–5.5001 General.

Under its working capital fund authorization (5 U.S.C. 542–2), the Agricultural Research Center at Beltsville, Md., may furnish to other Government agencies on a reimbursable basis (a) facilities, and services, (b) equipment rentals, and (c) supplies (such as plumbing, heating, lighting, lumber, etc., but not including office supplies), equipment, and materials, stores of which are maintained at the Center. The working capital fund of the Center may also be reimbursed for building construction, alteration, and repairs.

§ 4–5.5002 Contracting for Agricultural Research Center, Beltsville, facilities.

The Agricultural Research Service shall execute and administer building alterations and construction and other facilities' contracts for work as may be required at the Agricultural Research Center (including Plant Industry Station) Beltsville, Maryland, for all agencies of the Department. Requests for these services should be submitted to the Director, Administrative Services Division, Agricultural Research Service, Federal Center Building, Hyattsville, Md. The following fees will be charged for these services:

Service	Up to $10,000	$20,000	Over $20,000
Bid and contract management.	1%	1%	Rate as mutually agreed upon.
Inspection and supervision.	5%	4%	

In addition, certain engineering and design services of ARS can be made available upon agreement. The fee has been established at 4 percent of the construction contract estimated cost, up to $20,000. Over $20,000, the fee will be as mutually agreed upon between ARS and the agency.

Special services such as linear or topographic surveys, research into special building, design, unusual heating or air conditioning, temperature and humidity control criteria, may require reimbursement in addition to the 4 percent indicated above, and at rates mutually agreed upon.

The location of the building, approval of the site plan, arrangement for utility services, financial plan for building maintenance after completion, and maintenance of property records should be agreed upon with the Agricultural Research Center Operations office prior to the initial development of plans and specifications.

Subpart 4–5.51—Federal Prison Industries, Inc.

§ 4–5.5101 Authority.

The Federal Prison Industries, Inc., was authorized by the act of June 23, 1934 and created by Executive Order 6917, dated December 11, 1934. (18 U.S.C. 4121 to 4128).

§ 4–5.5102 Policy; purchase is mandatory.

Federal Departments and Agencies shall procure products available from Federal Prison Industries, Inc., from that source, except for exemptions provided for in § 4–5.5105.

§ 4–5.5103 Schedule of products available.

Products and services available from Federal Prison Industries, Inc., are listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions, Federal Prison Industries, Inc." Copies of the schedule are furnished direct to the Washington offices of the various agencies for distribution among their users both in Washington and the field by the Federal Prison Industries, Inc., U.S. Department of Justice, Washington, D.C., 20530.

Certain common-use items, listed in the Federal Prison Industries, Inc. Schedule of Products, are stocked at the supply centers of the Federal Supply Service, and when required in less than carload lots, shall be obtained therefrom. Purchases from any one of the following categories shall be made by submitting purchase orders in duplicate, prepared as shown on page B of the Introductory Section of the Federal Prison Industries' Schedule, direct to U.S. Department of Justice, Federal Prison Industries, Inc., Washington, D.C., 20530:

(a) Items available from Federal Prison Industries, not carried in stock by supply centers of the Federal Supply Service.

(b) Requirements of carload lots or more. (The quantity contained in carload lot shall be not less than the minimum carload weight for the commodity concerned as described in the Consolidated Freight Classification.)

(c) Items requiring overseas packaging or packing.

(d) Instances where the ordering installation or activity is so located that it would be more practical and economical to purchase direct from the manufacturing facility rather than the regional office of GSA. In such instances, a copy of the purchase order shall be forwarded to the regional office of the GSA which normally serves the installation or activity receiving the material.

Separate orders should be drawn for articles listed in different sections of the Federal Prison Industries Schedule. Government bills of lading are not required with the order, as they will be prepared by the shipper. Shipments will be made by the most economical means unless otherwise specified. Prices shown in the Schedule, unless otherwise indicated, are f.o.b. plant and subject to change without notice.

§ 4–5.5105 Clearances.

(a) Blanket indefinite: Clearance No. C 66052, of Federal Prison Industries, Inc., authorizes this Department to purchase from other sources, level and stadia rod covers, tripod covers, drawing board cases, seat covers, canvas water bags (1 and 2 gallon capacity), canvas belts, and all types of sleeping bags. Reference to the clearance number should be made on contracts, purchase orders, or vouchers for these items.

(b) When an article ordered from Federal Prison Industries, Inc. cannot be furnished or undue delay would be incurred in obtaining delivery from that source (purchase orders should indicate the latest delivery date which will be acceptable) a formal clearance will be issued on FPI Form 34. Such a clearance must be attached to the initial voucher to prevent exception by the General Accounting Office. Clearances will not be issued subsequent to purchases. Telegraphic clearance will be issued in case of emergency.

(c) Requests to Federal Prison Industries, Inc., for special clearances should show the reference to the preface sheet of each such class of products.

(d) No clearance is required for procurement from other sources for products or services available from Federal Prison Industries, Inc., under the following conditions:

(1) For purchase of less than carload lots of common-use items, designated in the Federal Prisons Inc. Schedule when purchased from the Federal Supply Service.

(2) When immediate delivery or performance is required by the public exigency.

(3) When suitable used or excess property can be secured.

(4) When procured and used outside of the continental limits of the United States and Alaska.

(5) Requirements for unlisted items costing $100 or less except for castings, canvas items and furniture refinishing.

(6) Orders for listed items amounting to $25.00 or less that require delivery within ten days.

§ 4–5.5106 Purchase of Substitute Items Under Clearance.

Items purchased from other sources as a result of clearance by Federal Prison Industries, Inc., must be identical with the description of the material cleared, since such clearance authorizes the purchase of material specifically described in the clearance document. As an example, in the event clearance is issued by Federal Prison Industries, Inc., to permit purchase from a commercial source of a quantity of canvas 40 inches wide and it develops that only canvas of another width is readily available, the purchase of the canvas of the other width is not authorized and procurement thereof shall not be consummated without additional clearance from Federal Prison Industries, Inc.

§ 4–5.5107 Disputes.

Purchases from other sources because of lower prices is not authorized and the Federal Prison Industries, Inc., will not issue clearance on that basis. Disputes as to the price, quality and character or suitability of products and services available from Federal Prison Industries, Inc. to meet the procurement agencies' requirement, shall be arbitrated by a board consisting of the Comptroller General of the U.S., the Administrator of the General Services Administration, and the Director of the Bureau of the Budget, or their representatives. Their decision shall be final and binding on all parties.

Subpart 4–5.53—General Services Administration

§ 4–5.5301 Stores depots.

§ 4–5.5301–1 General.

The Federal Supply Service, General Services Administraton, maintains stocks of numerous items of materials and supplies at its various field supply centers throughout the United States.

§ 4–5.5301–2 Ordering Stores Stock.

The Store Stock Catalog, which lists in one volume the items stocked by all of the various supply centers, is distributed by such center. Copies may also be obtained from the Printing and Distribution Branch, Federal Supply Service, General Services Administration, Washington, D.C., 20405. Instructions for ordering from Stores Depots are contained in this catalog. Orders for items of stores stock to be shipped to users within the continental United States shall be submitted in original only. Orders for items for export shipment (including shipments to Alaska and Hawaii) shall be submitted in duplicate.

§ 4–5.5301–3 Utilization of GSA Stores Depot Stocks.

Agencies within the continental United States, Hawaii and Alaska shall procure exclusively from the stores stock of GSA their requirements of all articles listed in the Stores Stock Catalog of the Administration, and supplements thereto as revised from time to time, except as provided below, and as may be otherwise specifically authorized. The exceptions of this section are not applicable to regulations covering standard and optional forms. Exceptions are as follows:

(a) When suitable Government-owned used, excess, or surplus property can be secured.

(b) Special items listed in the Administration Stores Stock Catalog and supplements thereto, which are only available from regional offices other than the one serving the requisitioning agency.

(c) Items listed in the Administration Stores Stock Catalog which are also covered by the Government Printing Office Catalog of Blank Paper and Envelopes, and which are obtained from the Government Printing Office for delivery in the District of Columbia.

(d) Items obtained under Federal Supply Schedule contracts.

(e) Ruled or unruled marginally punched forms listed in the Administration Stores Stock Catalog and supplements thereto, and marginally punched continuous forms obtained under term contracts issued by or available through the facilities of the United States Government Printing Office. (See § 4–5.5401.)

(f) Orders for $25 or less in value.

(g) Products required in case of public exigency, and time or circumstances do not permit clearance from appropriate Administration officials.

(h) Purchases in Alaska and Hawaii of items in Federal Supply Classification Group 89, Subsistence Items.

(i) Combustible, hazardous, or otherwise dangerous items which because of shipping restrictions (nonmailable) have been exempted by terms and conditions shown in the Stores Stock Catalog and supplements thereto.

(j) Small local purchases at the site of work or point of need, if imprest funds, Standard Form 44 (Purchase Order-Invoice-Voucher), or blanket purchase arrangements are available and used, and

(1) The items needed are nonrepetitive, infrequent, or isolated requirements which are not susceptible to planned requisitioning, or

(2) When an urgent need arises for any item cusomarily obtained from the Administration's stores stock and a portion or all of the requirements must be obtained prior to the time when it could normally be delivered from such stocks.

(k) Blind-made and prison-made products stocked by the Administration are specifically exempted in the following cases, in addition to any general exception under paragraphs (a) through (j) of this section:

(1) Carload lots or over, as described in the Uniform Freight Classification for the commodity concerned.

(2) Instances where the receiving activity is so located that it would be more practical and economical to purchase direct from the manufacturing facility rather than through the Administration regional offices.

§ 4–5.5301–4 Substitution policy.

GSA will substitute both regular and excess property without prior notification, unless the proposed substitute is used, reconditioned, or differs in some substantial characteristic from the item requisitioned; in which case, notice to substitute will be given and, if desired, an opportunity provided to inspect the substitute prior to shipment.

§ 4–5.5301–5 Billing and payment.

Payment to the General Services Administration for supplies, equipment, and services shall be made in accordance with 7 AR 60.

§ 4–5.5301–6 Shortages and overages—adjustments.

Adjustments of billings or payments are not required to be requested or made by billed agencies or the General Services Administration whenever the difference involved, resulting from over and under deliveries or over and under charges, represents an amount of $5.00 or less on any one invoice. This is not to be construed to eliminate billings and payments for requisitioned items of $5.00 or less.

§ 4–5.5301–7 Receipt.

Receipt may be established on a constructive basis in connection with payments to GSA. However, the receiving system of the agency should be sufficient to verify receipt of supplies, equipment and services and to establish control and accountability thereof within the agency. (See also 7 AR 60.)

§ 4–5.5301–8 Requests for stocking of additional items by GSA stores depots.

Requests for the inclusion of new items in GSA stock should be forwarded, in duplicate, through appropriate channels, to the Office of Plant and Operations for review and submission to the Federal Supply Service. Estimated annual requirements, as well as other available information which may be useful in considering the proposal should be included.

§ 4–5.5301–9 Use of GSA stores stock items by prime contractors in performing cost-reimbursable type contracts.

Where an agency of the Department administering a cost-reimbursement type contract deems it to be in the best interest of the Government to do so, such agency may authorize the prime contractor to purchase available items needed to carry out the contract from GSA Stores Depots in accordance with the limitations and procedures set forth in Subpart 1–5.9, Federal Procurement Regulations.

§ 4–5.5302 Purchase by the Federal Supply Service.

The Federal Supply Service has been assigned the purchase responsibility for certain specialized items as listed below. (See sections as noted for procedure to be followed in acquiring such items.)

Air Conditioning Equipment (§ 4–4.5002).
Electric Water Coolers and Fans (§ 4–4.5100).
Motor Vehicles (§ 4–4.5059).
New Household and Quarters Furniture (§ 4–4.5042).
A Paper and Paperboard (§ 4–4.5065).
Refrigerators (§ 4–4.5079).
Envelopes (§ 4–4.5032).

§ 4–5.5303 Federal Supply Schedules.

§ 4–5.5303–1 General.

Federal Supply Schedules are listings of articles and services available directly from contractors under contracts entered into by General Services Administration, at a stated price for a given period. Schedules are published in catalog style and list under major commodity classifications the articles and services available from the contractor named therein. Moreover, each schedule sets forth contractual terms and conditions, such as whether mandatory or optional in its use; minimum and maximum order amounts, and all essential ordering information for placing orders directly with contractors. The term "primary source" on the schedules denotes that it is mandatory for the agencies indicated.

§ 4–5.5303–2 Use.

Where a Federal Supply Schedule is designated as the primary source, agencies shall use such schedule for procuring the property or services listed therein, subject only to such exemptions for emergency conditions, etc., as are provided in the schedule. Where the delivery period offered in the schedule does not meet the delivery requirements of the purchasing activity, use of the schedule is not mandatory. However, delivery periods shown are based upon the average capabilities of the contractor and are usually conservative. Contractors, in most instances, are able to make delivery within a shorter period of time than the maximum provided in the schedule. Therefore, when delivery requirements are less than the maximum shown in the schedule, inquiry should usually be made of the contractor as to whether or not the delivery requirements

of the agency can be met. This procedure should be followed except in those cases where transportation time from the contractor's shipping point or time required for inquiry and reply make it impracticable to do so. Failure to meet maximum Federal Supply Schedule delivery dates (or dates for faster delivery as agreed to by the contractors) will constitute a breach of contract and will be treated in accordance with the procedures outlined in the Federal Supply Schedule checklist and guide.

§ 4–5.5303–3 Optional use.

Agencies are encouraged to utilize optional schedule contracts except where the procuring activity has actual knowledge that purchase can be made more advantageously from some other source. The schedule may be presumed to be advantageous in the absence of special circumstances indicating the advisability of advertising or further price inquiry. (See Comp. Gen. Dec. B–146334 of July 31, 1961.) Where a procurement from a source of supply other than a Federal Supply Schedule indicate that such source might be more advantageous to the Government, the name and address of the supplier together with other details of the procurement action should be forwarded to the Office of Plant and Operations for transmittal to the General Services Administration for consideration in connection with future schedule contracts.

§ 4–5.5303–4 Federal Supply Schedule checklist and guide.

GSA issues quarterly a Federal Supply Schedule checklist and guide as an aid in the use of Federal Supply Schedules. It contains a listing of all current Federal Supply Schedules and amendments thereto, together with the distribution code number for each schedule and catalog. This checklist and guide provides the ordering office all information necessary to use and understand the Federal Supply Schedules and for appropriate action in the event of delinquency or default on the part of the contractor.

§ 4–5.5303–5 Distribution of Federal Supply Schedules and contractors' catalogs.

Agency offices desiring to receive current copies and to be placed on distribution lists for receiving Federal Supply Schedules and contractors' catalogs should prepare and submit GSA Form 457, Request for Federal Supply Schedules and contractors' catalogs (including price lists), to the General Services Administration Regional Office for the area in which such ordering office is located. Copies of GSA Form 457 may be obtained from any GSA regional office.

§ 4–5.5303–6 Foreign materials.

Federal Supply Schedules sometimes include items of foreign origin or manufacture and, generally, a notation to that effect is shown directly above or below the description of the article. In the absence of a notation in the Schedule to the effect that the item is of foreign manufacture, it shall be assumed by the ordering office that the item is of domestic origin and manufacture. Upon delivery of the item, if inspection reveals that the item is of foreign origin or manufacture, acceptance should be withheld, pending determination by the Federal Supply Service as to whether the delivery of foreign material is permissible under the terms of the Federal Supply Schedule contract. If the Federal Supply Service advises that the contract provides for delivery of domestic goods only, the foreign material shall be rejected and demand made of vendor for domestic goods with advice that upon his failure to do so, purchase of domestic goods will be made from other sources and that his account will be charged with any excess costs occasioned thereby. In certain multiple award schedules which include both foreign and domestic items which will meet the requirements of an agency for a particular job, it is necessary to apply the Buy American Act differentials.

§ 4–5.5303–7 Recommendations for inclusion of additional items or other improvements in the Federal Supply Schedules.

Such recommendations should be forwarded, in duplicate, through appropriate agency channels, to the Office of Plant and Operations for review and submission to the Federal Supply Service. In the case of proposed new items, estimated annual requirements and other available information which may be useful in consideration of the proposal should be submitted.

§ 4–5.5303–8 Use of Federal Supply Schedule contracts by Government contractors.

Where an agency of the Department administering a cost-reimbursement type contract deems it to be in best interest of the Government to do so, such agency may authorize the prime contractor to purchase available items needed to carry out the contract from Federal Supply Schedule contractors, in accordance with the limitations and procedures set forth in Subpart 1–5.9, Federal Procurement Regulations. Agencies may authorize any contractor or subcontractor to purchase security cabinets under the conditions specified in GSA Circular No. 327, dated January 29, 1964.

Subpart 4–5.53—General Services Administration

§ 4–5.5304 Mechanical shops.

Mechanical work desired by the various agencies of this Department in Washington, D.C., such as carpenter, cabinet, pattern, machine shop, plumbing, pipe fitting, sheet metal, electrical, composition, fabric, and leather work, model making, painting, manufacture and repair of awnings, and mechanical supplies and equipment may be obtained on a reimbursable basis from the mechanical shops under the supervision of the Public Buildings Service, General Services Administration. Requests should be prepared on GSA Form 1354, Job Order. The construction of office furniture or other equipment by the mechanical shops will not be permitted when standard articles available from commercial sources at less cost will serve the requirements.

Subpart 4–5.54—Government Printing Office

§ 4–5.5400 Scope.

The purpose of this subpart is to outline methods for purchasing various supplies from the Government Printing Office. These supplies are broken down into three categories: (a) printing and binding items, including standard forms which require overprinting or some other alteration; (b) blank paper and blank envelopes, and miscellaneous stationery supplies, including inks, glues, etc.; and (c) publications.

§ 4–5.5401 Printing and binding items.

Generally, all printing and binding, including any items requiring performance of a printing and binding operation (which includes ruling, perforating, folding, lithographing, machine numbering, cutting of paper, rounding of corners and similar operations, as well as ordinary letterpress printing and binding process) must be obtained from the Government Printing Office, Washington, D.C., through the Office of Information. Form AD–78, request for Printing and Binding, is to be used for this purpose. In 18 Comp. Gen. 565, the following items are specifically cited as not falling within the provision of "printing and binding:"

Pads, ruled and unruled.
Pads, calendar.
Pads, columnar.
Cards, guide, monthly.
Sheets, backing (punched but not printed).
Fillers, looseleaf binder.
Indices, looseleaf binder.
Indices, tab, alphabetical.
Sheets, ledger.
Labels, gummed.
Labels, dispensing set.
Labels, poison.
Paper, graph.
Paper, cross section.
Paper, profile.
Cloth, ruled tracing.
Cards, index, library.
Dials, watchmen's clocks.
And other similar paper articles.

§ 4–5.5401–1 Authority.

Under the provisions of the act of March 1, 1919 (44 U.S.C. 111), all printing, binding, and blank book work for Federal agencies shall be done at the Government Printing Office unless the Joint Committee on Printing deems it necessary or urgent to have the work done elsewhere. However, the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 201–274) provides that the General Supply Fund of the General Services Administration shall be available for purchase from or through the Public Printer of standard forms or blank book work for stores depots issue. (A blank book is any book requiring printing, binding, or ruling operations, for its manufacture, and the primary purpose of which is for writing, sketching, or making entries. Generally, it must have covers, however light, and be stitched by wire or thread to be considered a "book." If the pages are merely held together with an adhesive, it is usually a "pad" and not a "book.") The Printing and Binding Regulations of the Joint Committee on Printing provide that standard forms approved by the Bureau of the Budget or the General Accounting Office shall be obtained from the General Services Administration, unless otherwise authorized by the Joint Committee on Printing. With the approval of the Joint Committee on Printing, the Public Printer may arrange for such printing, binding, and blank book work as he is not able or equipped to do at the Government Printing Office to be done elsewhere under contract. (Act of February 28, 1929, 44 U.S.C. 111a.)

§ 4–5.5401–2 Funds for printing and binding.

Funds for printing and binding are carried in the various appropriations of the Department along with other regular funds.

§ 4–5.5401–3 Waiver.

Under the provisions of the act of July 8, 1935 (44 U.S.C. 14), the Joint Committee on Printing may permit the Public Printer to authorize any Federal agency to purchase direct such printing, binding, and blank book work as the Government Printing Office is not able or suitably equipped to do, or as may be more economically or in the interest of the Government better executed elsewhere. (See 3 AR 295)

§ 4–5.5401–4 Authorized Government field printing plants.

The Joint Committee on Printing has authorized the establishment of certain field printing plants (listed in the Printing and Binding Regulations) which may perform such field printing as may

be urgent or necessary to have done for the use of any field service, the need for which originates and is for use in the geographical area of origin. (See 3 AR 317 for limitations on printing plants.)

§ 4–5.5401–5 Supervision over printing and binding.

Administrative supervision over all printing and binding, including contract field printing, rests with the Director of Information. (See 3 AR 290.)

§ 4–5.5402 Blank paper and blank envelopes, and miscellaneous supplies and services.

§ 4–5.5402–1 Authority.

Under the provisions of the act of June 7, 1924 (44 U.S.C. 225), the Public Printer is authorized to procure, under direction of the Joint Committee on Printing, and furnish on requisition paper and envelopes (except envelopes printed during course of manufacture) in common use by two or more departments, establishments, or services of the Government in the District of Columbia. Reimbursement is to be made to the Public Printer from appropriations available for such purposes. The act of June 20, 1932 (44 U.S.C. 62) provides the same authority with respect to inks, glues, and other miscellaneous supplies.

§ 4–5.5402–2 Types available.

The various items available are those listed in the Catalog and Price List of the U.S. Government Printing Office, Washington, D.C., titled, "Blank Paper and Envelopes, Inks, Glues, and Miscellaneous Supplies and Services." Copies of the catalog are distributed to agencies in Washington, D.C., by the Office of Plant and Operations.

§ 4–5.5402–3 Method of acquisition.

It is mandatory that all Federal agencies procure their requirements for items listed in the catalog from the Government Printing Office, except when items for field use can be purchased cheaper elsewhere, taking into consideration costs of packing and transportation by GPO (see 7 Comp. Gen. 712), or as otherwise provided for in this paragraph. If any of the items listed in the catalog are not stocked by the Central Supply Section they may be purchased by placing Form AD–38 with the Public Printer, Government Printing Office, Washington, D.C. The Government Printing Office will deliver the items listed in the catalog to Department agencies in Washington, D.C., at the prices quoted. Items not listed in the Government Printing Office quarterly catalog do not require waivers from the GPO for procurement elsewhere. If delivery to field offices is desired, the Government Printing Office, upon request, will prepare the items for shipment and include in its billing a charge for packing. In such cases, a Government bill of lading may be furnished with the purchase order, or the Government Printing Office may be requested to arrange the transportation and include the cost in its billing. If purchases for field delivery are not to be made from the GPO, other mandatory sources of supply should not be overlooked.

§ 4–5.5403 Publications.

The Superintendent of Documents, Government Printing Office, maintains stocks of various publications for sale to Federal agencies and to the general public. (44 U.S.C. 71, 72.) Such publications may be acquired for Washington or field delivery by forwarding Form AD–38 to the Superintendent of Documents, Government Printing Office, Washington, D.C.

Subpart 4–5.55—Military Petroleum Supply Agency

§ 4–5.5500 General.

See § 4–4.5064 for information concerning the submission of estimates, and the purchase of lubricating oil under contracts made by the Military Petroleum Supply Agency.

Subpart 4–5.56—National Industries for the Blind

§ 4–5.5601 General.

The National Industries for the Blind is the agency designated to facilitate distribution of orders among the agencies for the blind. The Federal Supply Service, General Services Administration, is the agency designated to coordinate purchases by the various Federal agencies of blind-made products. The purpose of this paragraph is to explain the procedure for purchase of blind-made products

§ 4–5.5602 Committee on Purchases of Blind-made Products.

This committee was created by act of Congress, June 25, 1938 (41 U.S.C. 46–48). It is the function of the committee to determine the fair market prices of commodities manufactured by the blind and offered for sale to the Federal Government by any nonprofit-making agency for the blind organized under the laws of the United States or of any State, and to make such rules and regulations regarding specifications, time of delivery, authorization of a nonprofit-making agency to facilitate the distribution of orders among the agencies for the blind, and other relevant matters of procedure necessary to carry out the purposes of the act.

§ 4–5.5603 Purchase policy.

All suitable commodities manufactured by the blind and offered to the Federal Government shall be procured from such agencies for the blind in all cases where the articles are available within the period specified at the prices determined by the committee to be a fair market price. The act does not apply where similar items are available from any Federal department or agency and procurement therefrom is required under the provisions of any law in effect on the date of the enactment of the act of June 25, 1938.

§ 4–5.5604 Schedule of Blind-made Products.

Items (such as brooms, mops, and related items) available from agencies for the blind are listed in the "Schedule of Blind-made Products," prepared under the direction of the Committee on Purchases of Blind-made Products, and issued through the Federal Supply Service. It is distributed to ordering offices of the Department by the Federal Supply Service in accordance with a mailing list established in each GSA regional office. The Schedule also contains complete details relative to the acquisition of blind-made products, as well as citations of the act and the regulations prescribed by the Committee on Purchases of Blind-made Products.

§ 4–5.5605 Clearances.

Any ordering office may purchase from commercial sources any items listed in the Schedule to meet requirements (a) of military necessity which require delivery within 2 weeks, (b) that total $25 or less (subject to the requirements in § 4–5.5301 on the use of stores stock), or (c) that are for use outside the continental United States.

§ 4–5.5606 Acquisition from GSA stores depots.

Blind-made products in common use will be carried in stock at all stores depots of the Federal Supply Service, and will be available therefrom in less than carload lots. The Schedule of Blind-made Products distinguishes between the items carried in stock by stores depots and those available through allocation by the National Industries for the Blind. Except purchases to be made through the National Industries for the Blind, as provided in § 4–5.5607, orders for blind-made products, including nonstock items, should be forwarded to the stores depot normally serving the agency. Separate orders should be placed for stock and nonstock items.

§ 4–5.5607 Acquisition From National Industries for the Blind.

Requests for allocations for blind-made products should be submitted by letter in duplicate directly to the National Industries for the Blind, 15 West 16th Street, New York 11, New York, when purchases fall into either of the categories stated below. Allocations thus obtained will enable agencies to place orders directly upon the manufacturing facility for the blind.

(a) Requirements for carload lots or more.

(b) Items requiring overseas packaging or packing.

(c) Where the ordering agency is so located that it would be more practical and economical to purchase directly from the manufacturing facility. In such instances a copy of the purchase order shall be forwarded to the supply center which normally serves the agency.

§ 4–5.5608 Procedure when similar products are made by Federal Prison Industries, Inc.

Section 7 of the act of May 27, 1930 (18 U.S.C. 4124) requires ordering offices to purchase those products made available by industries operated in Federal prisons. When similar products are made by agencies for the blind, an agreement has been effected with Federal Prison Industries, Inc., that when it receives an order for any such product which it is not in a position to supply, the original copy of the order, with a Federal Prison Industries, Inc., clearance will be returned to the ordering office with the advice that the product is listed in the Schedule of Blind-made Products.

Subpart 4–5.57—Office of Plant and Operations

§ 4–5.5701 Central Supply Section.

§ 4–5.5701–1 Authority.

As authorized in the Agriculture Appropriation Act for 1944 (5 U.S.C. 542–1) the Central Supply Section, Office of Plant and Operations, operates a central supply service for the purchase, storage, handling, issuance, packing, and shipping of supplies and equipment, which service shall be used to the fullest extent practicable in order to make unnecessary the separate maintenance of like services in agencies of the Department.

§ 4–5.5701–2 Delivery.

Agencies of the Department shall procure supplies, equipment, blank forms, or other materials needed for Washington delivery from the Central Supply Section to the extent such materials are carried in stock by that Section. Field offices may procure their needs from the Central Supply Section where this source of supply is the most economical.

§ 4–5.5701–3 Forms available.

There is included in the Central Supply Section Catalog a list of forms available to all agencies of the Department. The list includes Standard, Department, Civil Service, Treasury, Compensation Commission, and other miscellaneous common use forms. Under special arrangements with the agencies concerned, the Section also stocks certain forms adopted by and restricted to the use of individual agencies.

§ 4–5.5701–4 Ordering standard and AD forms.

The Central Supply Section purchases, stocks, and issues Standard and AD forms and uses the Working Capital Fund to finance initially the cost of such operation. Agencies shall reimburse the Working Capital Fund for the cost of such forms as well as the handling cost. With the following exceptions, all agency requirements for Standard and AD forms shall be obtained from the Central Supply Section:

(a) Tabulating cards, purchase orders and vouchers for transportation charges. For procurement of bills of lading see 5 AR 461c.

(b) Standard forms, which are not overprinted, serially numbered, or otherwise altered, for field use, shall be requisitioned from field warehouses of the Federal Supply Service.

(c) When, because of quantity, frequency of ordering, or other special circumstances, it appears more economical to order AD forms from the Public Printer, a printing requisition (Form AD–78), accompanied by a statement explaining the reasons why such an order would be more economical, may be submitted to the Office of Information where it will be processed if determined to be more economical.

§ 4–5.5701–5 Method of acquisition.

Agriculture Department Form 14, Request for Supplies, Equipment, or Service, shall be used to requisition materials and forms stocked by the Central Supply Section. See the reverse side of that from for detailed instructions for its use. Other instructions are contained in the Central Supply Section Catalog.

§ 4–5.5701–6 Handling charges.

The Central Supply Section operates under a working-capital fund. Charges for handling office and laboratory supplies are in the form of a surcharge against the purchase price of items delivered. Handling charges on printed forms are based on quantity and frequency of withdrawals as related to overhead.

§ 4–5.5702 Departmental contracts.

The Office of Plant and Operations makes consolidated term contracts for services constantly in demand by the Department but not covered by Federal Supply Schedules or other term contracts. Agencies are notified of these contracts through Plant and Operations Memoranda No. 22.

§ 4–5.5703 Contracting in Washington, D.C.

§ 4–5.5703–1 General.

The Procurement and Contract management Division of the Office of Plant and Operations performs procurement and sales contracting functions for agencies of the Department whenever proposed contracts are beyond the delegated authority of agencies to execute. The procedures in this § 4–5.5703 are designed to assure satisfactory award and performance of such contracts.

§ 4–5.5703–2 Preparation of invitations for bids.

Unless other arrangements are made with the Procurement and Contract Management Division, the agency shall prepare the invitation for bids in stencil form ready for duplicating except that the spaces for the invitation numbers, date of issuance, and date of opening should be left blank. The agency should consult with the contracting officer in the Division when preparing the specifications and bid invitation to obtain his assistance and guidance as may be necessary on technical phases of bid invitation preparation. The mimeograph stencils are to be transmitted to the Division together with a memorandum which should include (a) a request for the issuance of the invitation for bids, (b) the estimated cost of the procurement, (c) the appropriation and project to be charged for duplicating the invitation for bids, and (d) any other pertinent information deemed desirable or necessary. Except as otherwise arranged with the Division Contracting Officer, there shall be furnished a suggested list of all known, responsible sources of supply of the items involved. The Division will, after review of the materials submitted, complete the stencils, arrange for duplicating, and mail out the invitations for bids. A copy of the Duplicating Short Order Requisition, Form AD–274, used by the Division in arranging for duplicating service, will be furnished to the agency.

§ 4–5.5703–3 Award of contracts.

The agency shall provide such assistance to the Division Contracting Officer as he may need in tabulating bids, preparing contracts, etc. The Division will notify the agency of proposed awards and request authorization to award and a statement that funds are available in the current appropriation reserved for the proposed award. After award, the Division will notify the contractor of award or arrange with the agency to prepare the notification if more convenient. The original and necessary conformed copies of the contract will be sent to the agency immediately. The rejected bids will be retained in the Division for about two weeks, in order to facilitate answering inquiries by interested persons, after which they will be sent to the agency for filing.

§ 4–5.5703–4 Solicitation of bids in the field and awards in Washington.

Bids solicited by a field officer where the amount involved is in excess of his contracting authority, or where he has no contracting authority, shall be forwarded through channels to the agency headquarters office in Washington for award within the limits of its authorization. If the amount exceeds the authority of the headquarters office, the bids shall be forwarded to the Procurement and Contract Management Division for award. In emergencies or other justifiable circumstances, special authority may be granted for field acceptance.

§ 4–5.5703–5 Contract administration.

The successful completion of contracts awarded by the Division requires close cooperation and coordination between the Division and the agencies. After a contract is executed by the Division for an agency, the agency representatives have responsibility for the placing of the order or other notice to the contractor to proceed with the work, for follow-up and expediting of performance, for inspection and testing of materials or services furnished, and for any other action necessary to obtain satisfactory performance under the contract. Those actions which are a responsibility of the

contracting officer under the terms and conditions of the contract may not be performed by any other person, unless there is a written delegation by the contracting officer designating specific persons to act for him. These include the execution of such documents as change orders, extensions of contract time for performance, notices of default or termination of the contractor's right to proceed under the contract, findings of fact and decisions on questions of fact in dispute. Whenever such actions are required, the necessary documents should be prepared for signature of the contracting officer (or his designated representative) after such consultation with him as may be appropriate. The agency representative is responsible for maintaining constant cognizance of the status of performance by the contractor. Whenever it appears that a contract is not being, or will not be performed satisfactorily, the contracting officer should be advised promptly.

Subpart 4–5.58—Purchases From Government Agencies Under Section 601 of the Economy Act

§ 4–5.5801 Authority.

The authority for this paragraph is contained in the act of May 21, 1920, as amended by Section 601 of the Economy Act (June 30, 1932), as amended. (31 U.S.C. 686 and 686–1.) Nothing in this paragraph affects purchases under working capital funds, or pursuant to specific agency authority for making sales, as outlined in 5 AR 590. See 7 AR 93 and 106 regarding availability of appropriations and the handling of payments.

§ 4–5.5802 Placing orders.

Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such department, establishment, bureau, or office to be in the interest of the Government to do so, may place orders with any other such department, establishment, bureau or office for materials, supplies, work, or services of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render (or in a position to contract for where requirements of the Army, Navy, Treasury Department, Federal Aviation Agency or the Federal Maritime Commission are concerned). If work or services can be as conveniently or more cheaply performed by private agencies, they shall be let by competitive bids.

§ 4–5.5803 Participation in extra-departmental contracts.

It is desirable to purchase under the contracts of other Government departments when suitable materials can be secured economically and all parties interested are agreeable to such purchases, but in so doing care should be exercised to handle all negotiations in such a manner as not to become burdensome to the contracting agency. Information concerning extra-departmental contracts may be obtained from the Office of Plant and Operations.

PART 4–6—FOREIGN PURCHASES

Subpart 4–6.1—Buy American Act—Supply and Service Contracts

Sec.
4–6.105 Excepted articles, materials and supplies.
4–6.150 Purchase from contracts made by other Departments.
4–6.151 Contracts for services.

Subpart 4–6.2—Buy American Act—Construction Contracts

4–6.202 Buy American policy.
4–6.202–2 Determining domestic construction material.
4–6.203 Unreasonable cost determination.
4–6.203–2 Cost computation.
4–6.250 Listing in invitation for bids.

AUTHORITY: The provision of this Part 4–6 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–6.1—Buy American Act—Supply and Service Contracts

§ 4–6.105 Excepted articles, materials and supplies.

(a) The Buy-American Act does not apply if the items to be used, or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Heads of agencies or their designees are authorized to determine and certify as to nonavailability of domestic products. Designees shall be responsible headquarters or field officials other than the purchasing officer. At the discretion of heads of agencies, however, all officers and employees authorized to purchase trade, text, technical or scientific books, newspapers, magazines, periodicals and printed briefs, charts and maps may certify to the nonavailability of such, when they are not printed in the United States and for which domestic editions are not available. In making the required determination, there shall be considered whether similar domestic articles, materials and/or supplies will adequately serve program needs. The determination should be in the form of a statement of fact certified to as follows:

Corresponding articles, materials or supplies are not mined, produced or manufactured in the United States in reasonably available commercial quantities and of a satisfactory quality.

(b) When the head of an agency or his designee determines a need for making repetitive purchases of a foreign item, the following general form is to be followed in preparing notice of agency clearance. Each clearance shall be effective for a period of one year from date of issuance unless, prior to the expiration date, a domestic product is found to meet agency requirements. In that event, adequate notice shall be given immediately as to the availability of the domestic product and the termination of the particular clearance.

No.----------
Date----------

CLEARANCE

Whereas, in the Administration of the Buy American Act (41 U.S.C. 10a–10d) and in accordance with AGRP 4–6.155, I have found the following articles, materials, or supplies necessary to the activities of this agency, and that corresponding articles, materials or supplies are not mined, produced, or manufactured in the United States in reasonably available commercial quantities and of a satisfactory quality:

(List of items)

Now, Therefore, by virtue of the authority vested in me as ----------
(Title)
----------, I hereby authorize the
(Agency)
procurement of the above listed articles, materials or supplies. This authorization expires ----------.

Hereafter, the above clearance number shall be indicated on all procurement documents.

(Signature)

§ 4–6.150 Purchase from contracts made by other Departments.

When purchasing against contracts of other departments, such as Federal Supply Schedule contracts, etc., necessary determinations and certifications will be made by the heads of those respective departments except as otherwise indicated in some multiple award Federal Supply Schedules.

§ 4–6.151 Contracts for services.

Where services such as aerial photography, aerial spraying, research, etc., are to be performed in the United States, and a foreign bid is low, the matter shall be referred to the Office of Plant and Operations for appropriate determination.

Subpart 4–6.2—Buy American Act—Construction Contracts

§ 4–6.202 Buy American policy.

§ 4–6.202–2 Determining domestic construction material.

Determinations that domestic construction material is unavailable in sufficient and reasonably available commercial quantities and of a satisfactory quality will be made in accordance with § 4–6.105.

§ 4–6.203 Unreasonable cost determination.

§ 4–6.203–2 Cost computation.

This determination should be made by evaluating the data submitted by the bidder and the making of such price inquiry as deemed necessary by the contracting officer to reasonably establish the accuracy of data used for the basis of award. Nothing in this subpart shall preclude determinations under § 4–6.202–2.

§ 4–6.250 Listing in invitation for bids.

When it can be predetermined under § 1–6.202–1 that nondomestic construction material is to be used, such material shall be listed in the invitation for bids. All material excepted under § 1–6.202–1 shall be listed in the contract and findings justifying such exceptions shall be made a part of the contract file.

PART 4–7—CONTRACT CLAUSES

Subpart 4–7.1—Fixed-Price Supply Contracts

Subpart 4–7.1—Fixed-Price Supply Contracts

Sec.

4–7.101 Clauses.
4–7.101–4 Variation in quantity.
4–7.101–7 Payments.
4–7.101–12 Disputes.
4–7.101–13 Notice and assistance regarding patent and copyright infringement.

Subpart 4–7.6—Fixed-Price Construction Contracts

4–7.602 Additional standardized clauses.
4–7.602–1 Price adjustment for suspension, delay, or interruption of the work.

Subpart 4–7.50—Clauses of General Application

4–7.5001 Releases from contractors.

AUTHORITY: The provisions of this Part 4–7 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–7.1—Fixed-Price Supply Contracts

§ 4–7.101 Clauses.

§ 4–7.101–4 Variation in quantity.

Note that the standard variation in quantity provision in § 1–7.101–4 does not authorize the contractor to vary quantities delivered from contract amounts except as may be specifically set forth in the contract. Nonetheless, where minor differences in quantities delivered occur and for reasons such as the administrative expense involved, it would be uneconomical to enforce delivery requirements, the contract may be considered complete upon agreement with the contractor as to an equitable adjustment in contract price.

§ 4–7.101–7 Payments.

See § 4–7.101–50.

§ 4–7.101–12 Disputes.

When Standard Forms are not utilized, the disputes clause must be consistent with the Wunderlich Act (41 U.S.C. 321–322) which provides for judicial review of decisions made by the head of a department in a dispute involving questions of fact, if it is alleged that such decision is fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith, or is not supported by substantial evidence; and further provides that no Government contract shall contain a provision making final on a question of law the decision of any administrative official.

§ 4–7.101–13 Notice and assistance regarding patent and copyright infringement.

(a) *Contract provisions.* Where it is deemed advisable to protect the Government against possible infringement of patent rights, the following wording is suggested:

> The contractor shall hold and save the Government, its officers, agents, servants and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this contract, including their use by the Government.

(b) *Exceptions.* Where any patent or patents are to be excepted from the operation of the above article, such exceptions will be specifically stated, by reference to the patent number, date of issue and name of patentee, in a proviso to be added to the article.

(c) *Patent bond.* The protection afforded by use of the above clause is necessarily limited to the responsibility of the contractor, unless bond is furnished indemnifying the Government against any action for infringement or illegal use of patent (13 Comp. Gen. 173). When the Government is on notice of the possibility of an infringement of patent rights, there should be included in the invitation for bids, in addition to the patent clause above, a requirement that the successful bidder will be required to post a patent bond, in the amount stipulated. There is no standard form of patent bond; therefore, when one is required, it must be prepared by the Office of the General Counsel.

Subpart 4–7.6—Fixed Price Construction Contracts

§ 4–7.602 Additional standardized clauses.

§ 4–7.602–1 Price adjustment for suspension, delay, or interruption of the work.

Prior approval of the Director of Plant and Operations is required for use of a clause such as stated in § 1–7.602–1.

Subpart 4–7.50—Clauses of General Application

§ 4–7.5001 Releases from contractors.

A provision shall be included in all construction contracts and project service contracts providing for the contractors to furnish a release of all claims. The following wording is suggested:

Upon completion and acceptance of all work under the contract, the contractor shall furnish a release of all claims against the Government arising under and by virtue of the contract.

The following wording is suggested for the release to be obtained from the contractor:

For and in consideration of the receipt of final payment in the amount of $---------- under and pursuant to the following contract, ----------, the undersigned hereby releases the Government from any and all obligations whatsoever arising under said contract. Date ------ Signature of contractor ----------

PART 4–8—TERMINATION OF CONTRACTS

Subpart 4–8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost-Reimbursement Type Contracts

Sec.
4–8.201 General.
4–8.207 Accounting review of prime contract settlement proposals and of subcontract settlements.
4–8.211 Review and approval of proposed settlements.
4–8.211–2 Required review and approval.

Subpart 4–8.6—Termination for Default

4–8.600 Scope of subpart.
4–8.602–3 Procedure in case of default.
4–8.650 Termination procedures of general applicability.
4–8.650–1 Delay in performance—excusable causes.
4–8.650–2 Delays of subcontractors.
4–8.650–3 Determining damages.
4–8.650–4 Assessing liquidated damages.
4–8.650–5 Remission of liquidated damages.
4–8.650–6 Disposition of damages collected.
4–8.650–7 Failure to collect from contractor—demand on guarantor.
4–8.650–8 Failure to collect from contractor or guarantor—"Statement of Damages."

Subpart 4–8.7—Clauses

4–8.700 Scope and applicability of subpart.
4–8.700–2 Applicability.

AUTHORITY: The provisions of this Part 4–8 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost-Reimbursement Type Contracts

§ 4–8.201 General.

A contract may be terminated in whole or part when in the public interest to do so, regardless of the fact that it contains no provision authorizing such action. In such event, the contractor's settlement claim shall be handled in accordance with 18 Comp. Gen. 826, which is quoted in part as follows:

> When the public interest so requires, a contracting officer may terminate a contract which he was authorized to make, and by supplemental contract agree with the contractor upon the compensation to be paid for the work already performed, etc., provided the amount agreed upon is proper and just and is accepted by the contractor in full and final settlement of all rights incident to, or arising out of, the original and supplemental contracts, and even if no amount can be agreed upon the contract nevertheless may be terminated if administratively deemed in the interest of the United States, and the contractor left to present his claim to the Government accounting officers or the courts.
>
> The determination as to whether the public interest requires the termination of a contract is a matter for administrative decision and does not rest with the Government accounting officers who are concerned primarily with the availability of the appropriation for any expenditure resulting from the termination.

§ 4–8.207 Accounting review of prime contract settlement proposals and of subcontract settlements.

The provisions of § 1–8.207 shall not be applicable to contract administration in this Department. The procedures of § 1–8.205(b) and Part 4–50 will provide adequate assurance that accounting as well as legal, engineering or other professional counsel is obtained in negotiating contract settlements. As stated in § 4–1.350–3, the responsibility for deciding questions of fact is a responsibility of the contracting officer that may not be delegated.

§ 4–8.211 Review and approval of proposed settlements.

§ 4–8.211–2 Required review and approval.

Each agency shall provide for designating a settlement review board of three or more members as required by § 1–8.211–2. The Board of Contract Awards required by § 4–3.150 may function as a settlement review board.

Subpart 4–8.6—Termination for Default

§ 4–8.600 Scope of subpart.

Where default clauses other than those cited in § 1–8.600 are used, the policies and procedures of this subpart shall nontheless be followed to the extent feasible and consistent with the language of the clause used. Additional termination procedures of general applicability are prescribed in § 4–8.650.

§ 4–8.602–3 Procedure in case of default.

The failure to perform in accordance with the contract terms does not in itself require termination for default in accordance with Subpart 1–8.6. The contractor should usually be given an opportunity to correct the deficiency. Generally, notice of termination should be given only when (a) the urgency of need is so great that immediate action must be taken, (b) it is evident that the contractor has no intention of completing his contract within a reasonable time, (c) the action is necessary to prevent accrual of excessive liquidated damages, (d) there is a violation of statutes applicable to contracts requiring termination, or (e) in the public interest. (See 11 Comp. Gen. 81 and 384.)

§ 4–8.650 Termination procedures of general applicability.

§ 4–8.650–1 Delay in performance—excusable causes.

The contractor shall not be charged with damages when the delay arises out of causes beyond the control and without the fault or negligence of the contractor, as defined in the default provisions of the contract. The contracting officer shall determine the facts of the delay, prepare a findings of fact, and extend the contract time if the delay is determined to be excusable under the terms of the contract.

§ 4–8.650–2 Delays of subcontractors.

The timely procurement of labor and materials necessary for the required performance of a Government contract is the responsibility of the contractor. Under the standard default provision of Standard Form 23A, the prime contractor is responsible for delays of subcontractors or suppliers unless the delays were due to causes which could not have been foreseen by either the contractor or such subcontractors or suppliers. (See 7 Comp. Gen. 343.) Note that there is no unforeseeable requirement in the General Provisions of Standard Form 19 and Standard Form 32, General Provisions (Supply Contract).

§ 4–8.650–3 Determining damages.

(a) *General.* A defaulting or delinquent contractor is liable for any damages which may reasonably be considered as arising in the usual course of things from the breach of the contract. These damages may include such items as the excess cost of the replacement purchase, added cost of overhead directly involved in the administration of the contract, rentals, demurrage, etc., to the extent that such damages are directly the result of the breach of contract, as opposed to losses that may be considered remote or conjectural, and are assessable even though the contract does not contain a provision for liquidated damages, and the Government subsequently accepts the delinquent deliveries. (Comp. Gen. Decision B–124041 of October 24, 1955) When a contract includes a liquidated damage provision, the extent of the contractor's liability is fixed by that provision, and includes, in addition to the liquidated damage assessment, only the excess cost of the replacement purchase.

(b) *Determination of excess costs.* The excess costs chargeable to a defaulting contractor are fixed at the time the second contract is made. Subsequent price adjustments to the replacing contract will have no effect on the liability of the original contractor. (See 22 Comp. Gen. 1035.) The excess costs to be charged against the account of a defaulting contractor are to be computed on the basis of the quantity required by the original contract, with consideration given to the variation clause, if any. When a default involves more than one item and the subsequent repurchase results in a saving on some items and excess costs on others, computation of damages must be made on the basis of the original contract as a whole. (See 34 Comp. Gen. 4.) Contractor's liability extends equally to cash discounts offered. (See 15 Comp. Gen. 117.)

§ 4–8.650–4 Assessing liquidated damages.

(a) *Enforcement.* When a contract provides for assessment of liquidated

damages, enforcement of such provision is mandatory in the event of unexcused delay or failure to perform.

(b) *Improper assessment of liquidated damages.* Contracting officers have no legal authority to excuse a contractor from liquidated damages which are properly assessable under the terms of a contract. However, when the contracting officer determines that the facts are such that liquidated damages were improperly assessed, such erroneous action may be locally remedied by a reconsideration of facts and a decision rendered in favor of the contractor. Such action may be taken by the contracting officer, within the scope of his authority under the contract terms to settle disputes without recourse to the Secretary. In such cases written notice shall be given to the certifying officer through regular agency channels authorizing payment of the liquidated damages previously assessed in error. The above action should not be confused with the "remission" of liquidated damages which is treated in § 4–8.650–5.

(c) *Proof of damage.* When the contract provides for the assessment of liquidated damages, it is not generally necessary for the Government to prove any damage or loss under such a provision and the question of whether the Government suffered any actual damage is not for consideration in determining whether liquidated damages should be charged. (See 16 Comp. Gen. 374 and 32 Comp. Gen. 67.)

(d) *Default of successor contractor.* The question of the division of liabilities where more than one contract is required to obtain a single objective was settled in 15 Comp. Gen. 149, as follows:

> Where it becomes necessary to enter into a contract with a second contractor because of the default of the first contractor and because of the partial default of the second contractor a contract becomes necessary with a third contractor, the liability of the first defaulting contractor is fixed at the time the second contract is made and the liability of the second defaulting contractor is fixed at the time the third contract is made.

(e) *Liability of surety.* When a surety undertakes to complete the contract of its principal whose right to proceed was terminated, the surety is chargeable with liquidated damages accrued until such time as the Government may reasonably obtain similar supplies or services, plus the excess cost occasioned the Government in having the work prosecuted to completion, but if the principal's right to proceed was not terminated, liquidated damages are chargeable to the surety to date of completion.

§ 4–8.650–5 Remission of liquidated damages.

The Comptroller General of the United States is authorized by Law (41 U.S.C. 256a), on the recommendation of the Secretary, to remit such liquidated damages as in his discretion may be just and equitable. Claims for remission of liquidated damages must definitely establish equities on behalf of the contractor to merit favorable consideration by the Comptroller General. Equity, among other things, is used to describe the standing of a party to claim relief, the merit of the claim being dependent upon a showing as to his ability to have prevented the situation in which he finds himself. (See 32 Comp. Gen. 67; and 34 Comp. Gen. 251.) Such claims shall be reviewed by the contracting officer who shall prepare a findings of fact with his recommendation, and forward the findings with the claim through agency channels to the Office of Plant and Operations.

§ 4–8.650–6 Disposition of damages collected.

Any amounts, representing excess costs or other damages, collected from the contractor shall be deposited to Miscellaneous Receipts in the manner prescribed by the agency. The deposit shall be accompanied by a letter of transmittal or other advice making appropriate reference to the number of the defaulted contract, in order that the deposit may be properly identified and to provide notice to the certifying officer that collection of damages has been made and that vouchers covering payments due the contractor and being withheld may be passed for payment. If no damages are involved, written notice thereof shall be given to the certifying officer through regular agency channels in order that any voucher covering payments due the contractor and being withheld may be passed for payment.

§ 4–8.650–7 Failure to collect from contractor—demand on guarantor.

If collection from the contractor is not effected and a performance bond or other guaranty has been furnished, the guarantor will be notified of the default on contract, and a formal demand made on such guarantor for the amount of the damages. If collection from the guarantor is effected, the funds so collected shall be handled in the manner outlined under § 4–8.650–6.

§ 4–8.650–8 Failure to collect from contractor or guarantor—"Statement of Damages."

If collection is not made by the procurement officer from either the defaulting contractor or his surety, a "Statement of Damages" shall be prepared and forwarded through agency channels to the Comptroller General. Such statement shall include all facts pertinent to the default, amount of damages, method of computations, etc., and shall constitute additional notice to all concerned to withhold certification and/or payment of vouchers in any amount which may be then due or which may become due in the future, until the amount so withheld shall equal the amount of the damages. The procurement office shall maintain an accurate record of the entire transaction to provide such additional information or clarification of data as may be required by the General Accounting Office.

Subpart 4–8.7—Clauses

§ 4–8.700 Scope and applicability of subpart.

§ 4–8.700–2 Applicability.

Termination clauses: See Form AD–264, General Provisions for Research and Service Contracts, for the clause prescribed for such contracts of this Department. Special termination clauses may be used for service contracts such as aerial photography, airplane rental or use, and the like, and for contracts to be performed in foreign countries.

PART 4–10—BONDS AND INSURANCE

Subpart 4–10.1—Bonds

Sec.	
4–10.103	Bid guarantees.
4–10.103–3	Invitations for bids provisions.
4–10.104	Performance bonds.
4–10.102–2	Other than construction contracts.
4–10.105	Payment bonds.
4–10.105–2	Other than construction contracts.
4–10.150	Invitation for bids provisions—other than construction contracts.
4–10.151	Waiver of bonds covering contracts performed in foreign country.
4–10.152	Review and approval of bonds.
4–10.153	Filing of surety bonds.
4–10.154	Annual contract bonds.

Subpart 4–10.2—Sureties on Bonds

4–10.204–50	Handling of bid securities other than bonds.

Subpart 4–10.3—Insurance—General

4–10.350	Government property.
4–10.351	Private property.

AUTHORITY: The provisions of this Part 4–10 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–10.1—Bonds

§ 4–10.103 Bid guarantees.

§ 4–10.103–3 Invitations for bids provisions.

The statement referred to in § 1–10.103–3 shall be worded as follows:

Each bidder must submit a bid guarantee with his bid in the amount of ----------% of his total bid price. If a bid bond is submitted, it should be on Standard Form 24. Money orders and checks, if used, shall be drawn payable to [insert name of the specific organizational unit of the agency concerned.]

§ 4–10.104 Performance bonds.

§ 4–10.104–2 Other than construction contracts.

Security to guarantee performance under a service or supply contract should be required only when it is determined that it is needed to stimulate performance or to facilitate recovery of damages or excess costs. The need is more likely to arise when the contract requires a substantial amount of nonpersonal services in its performance.

§ 4–10.105 Payment bonds.

§ 4–10.105–2 Other than construction contracts.

Security to guarantee payment under a service or supply contract to laborers and mechanics and suppliers, may be required where determined by the contracting officer to be in the best interests of the Government. (See Comp. Gen. Decision A–90922, February 23, 1938.)

§ 4–10.150 Invitation for bids provisions—other than construction contracts.

Whenever security is to be required in connection with bids or the resulting contract, the invitation for bids should state clearly what form of security will be acceptable and the amounts that will be required. Language prescribed in § 1–10.103–3 should appear in the invitation for bids for required bid guarantee. The following provisions, modified as appropriate, shall be used when requiring performance and payment security:

(a) Performance security:

The successful bidder will be required to furnish security to guarantee faithful performance of the contract in the amount of ----% of the total contract price. Security may be in the form of a performance bond on Standard Form 25 (furnished on request), or in the form of a postal money order, certified check or cashier's check, or United States Government bonds or notes (at par value) may be deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: [insert name of the specific organizational unit of the agency concerned.]

(b) Payment security:

The successful bidder will be required to furnish security to guarantee payment to all persons supplying labor or materials in the performance of the contract, such security to be in the form of a payment bond on Standard Form 25A (furnished on request), in the amount of ----% of the total contract price.

§ 4–10.151 Waiver of bonds covering contracts performed in foreign country.

The contracting officer is authorized to waive the requirement for performance and payment bonds for so much of the work under contract as is to be performed in a foreign country, if he finds it impracticable for the contractor to furnish such bonds.

§ 4–10.152 Reveiw and approval of bonds.

The contracting officer is responsible for the review and approval of bonds as to form and sufficiency. Surety bonds will be reviewed to determine that the surety is acceptable as prescribed in § 1–10.202, and that the person signing the bond for the surety has the authority to do so. Such authority may be requested in the form of a power of attorney or affidavit by an officer of the bonding company, indicating that the person signing the bond is duly authorized to act for the company. The bond will be reviewed to determine that it is completed in accordance with the instructions on the bond form. Other than surety bonds will be handled in accordance with § 1–10.204.

§ 4–10.153 Filing of surety bonds.

Surety bonds of the accepted bidder are to be filed with the original of the contract.

§ 4–10.154 Annual contract bonds.

Information concerning annual bid or performance bonds on file with the Office of Plant and Operations is provided by Plant and Operations memoranda. The purpose of annual bonds is to eliminate repeated posting of individual bonds for individual cases by companies receiving frequent awards by the Department. Annual bonds, whether bid or performance, are usually Department-wide. The bond is to cover any contract within the Department, regardless of the agency concerned. When a bidder has on file with the Office of Plant and Operations an annual bond of sufficient amount to cover the contract in question, no additional surety is required.

Subpart 4–10.2—Sureties on Bonds

§ 4–10.204–50 Handling of bid securities other than bonds.

See 7 AR 153 and 160a(2) for instructions on safekeeping of bid and specification deposits upon receipt.

Subpart 4–10.3—Insurance—General

§ 4–10.350 Government property.

The Government will not pay insurance on its property unless such payment is specifically authorized by Congress. (See 17 Comp. Gen 419 and 19 Comp. Gen. 211). The following authorization has been given this Department:

The Foreign Agricultural Service is authorized to obtain insurance on official motor vehicles operated by it in foreign countries, and pay the expenses incident thereto. (5 U.S.C. 170h (a) as amended by 71 Stat. 329.) (See also Comp. Gen. Dec. B–140401, 8–27–59.)

§ 4–10.351 Private property.

The general policy of the Federal Government not to carry insurance upon its property is not applicable to cases involving private property temporarily entrusted to the custody of the Government for its purposes. The loan or other agreement must be specific as to the liability of the Government for the property. Where the Government is to assume liability of any kind, insurance coverage therefor may be purchased directly, or paid for as a part of the loan agreement, where this is determined to be in the interests of the Government. Such insurance coverage may be desirable in connection with loans of (a) valuables, (b) equipment used in programs financed with foreign currencies, (iii) vehicles, etc. (17 Comp. Gen. 55, 56 and Comp. Gen. Decisions A–46214 of 12–27–32, B–127020 of 4–5–56, A–7302 of 7–14–25.)

PART 4–12—LABOR

Subpart 4–12.1—Basic Labor Policies

Sec.
4–12.102 Overtime, extra-pay shifts, and multi-shift work.
4–12.102–4 Approvals.
4–12.150 Unauthorized contract provisions.
4–12.151 Authority.
4–12.152 Enforcement.
4–12.153 Report of violations, underpayments, or contract terminations.

Subpart 4–12.2—Convict Labor

4–12.202 Applicability.
4–12.250 Interstate transportation of convict-made goods.

Subpart 4–12.3—Contract Work Hours Standards Act (Other Than Construction Contracts)

4–12.302 Applicability.
4–12.303 Contract clause.
4–12.304 Variations and tolerances.
4–12.350 Deductions from contract payments for violations.

Subpart 4–12.4—Labor Standards in Construction Contracts

4–12.401 Statutory and regulatory requirements.
4–12.401–1 Davis-Bacon Act.
4–12.401–2 Copeland Act.
4–12.401–3 Contract Work Hours Standards Act.
4–12.401–4 Department of Labor requirements.
4–12.402 Applicability.
4–12.402–2 Supply, service, maintenance, or other contracts involving construction.
Sec.
4–12.404 Administration and enforcement.
4–12.404–1 General.
4–12.404–2 Wage determinations.
4–12.404–3 Additional classifications.
4–12.404–6 Payrolls and statements.
4–12.404–7 Investigations.
4–12.404–8 Reports of violations.
4–12.404–9 Suspension and deduction of contract payments.
4–12.404–13 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours Standards Act.
4–12.450 Irregularities and withholdings under the Davis-Bacon Act.
4–12.451 Instructions regarding labor provisions.

Subpart 4–12.6—Walsh-Healey Public Contracts Act

4–12.602 Applicability.
4–12.602–3 Department of Labor regulations and interpretations.
4–12.604 Responsibility of Contracting Officer.
4–12.605 Contract clause.
4–12.650 Requests for exceptions or exemptions.

Subpart 4–12.8—Equal Opportunity in Employment

4–12.801 Policy.

Subpart 4–12.50—Defense Base Act

4–12.5001 Contract requirement.
4–12.5002 Contract clause.
4–12.5003 Waiver.

AUTHORITY: The provisions of this Part 4–12 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–12.1—Basic Labor Policies

§ 4–12.102 Overtime, extra-pay shifts, and multi-shift work.

§ 4–12.102–4 Approvals.

Heads of procuring activities may approve overtime premiums and shift premiums at Government expense, in accordance with § 1–12.102–4.

§ 4–12.150 Unauthorized contract provisions.

Labor standards provisions going beyond the requirements of applicable laws may not be incorporated in Government contracts. (See 20 Comp. Gen. 24, 22 Comp. Gen. 265, 31 Comp. Gen. 561, 33 Comp. Gen. 477, and 42 Comp. Gen. 1.)

§ 4–12.151 Authority.

Reorganization Plan No. 14 of 1950 provides that to assure coordination of administration and consistency of enforcement of labor standards provisions of various designated acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures which shall be observed by these agencies. Pursuant thereto, the Secretary of Labor has issued regulations which are stated in 29 CFR Parts 3 and 5. (See § 4–52.502.) The recommended policies and procedures of Subpart 1–12.1 shall be followed in giving effect to the regulations of the Secretary of Labor.

§ 4–12.152 Enforcement.

The enforcement of labor standards provisions of contracts is in the same category as other requirements of the contract specifications. Failure to comply with such labor standards requires adjustment by contractors and subcontractors and, in addition, may result in penalties being imposed. All concerned with enforcement of the labor standards provisions of contracts should therefore be thoroughly familiar with these contract provisions.

§ 4–12.153 Report of violations, underpayments, or contract terminations.

Reports required by §§ 5.6 and 5.7 of the regulations of the Secretary of Labor (29 CFR 5.6, 5.7) will be made through the Office of Plant and Operations.

Subpart 4–12.2—Convict Labor

§ 4–12.202 Applicability.

The Comptroller General has held (28 Comp. Gen. 409) that Executive Order 325–A does not apply to contracts which merely require the furnishing of finished articles. 32 Comp. Gen. 32 reiterates this decision but also holds that the Executive Order precludes the award of contracts involving "the employment of labor" whether the contractor be the prison itself or a private person.

§ 4–12.250 Interstate transportation of convict-made goods.

Transportation in interstate commerce of goods produced in whole or in part by convict labor is, with certain exceptions for specific application, prohibited by law. (18 U.S.C. 396a) One of the exceptions is a proviso to the effect that it shall not apply to commodities manufactured in Federal or District of Columbia penal and correctional institutions for use by the Federal Government. Also, the Solicitor of this Department in an opinion addressed to the Director of Finance, under date of September 23, 1943 (No. 4820) held that, on the basis of opinions rendered by the Attorney General of the United States on May 6, 1942, and June 20, 1942, the above-mentioned law does not prevent the interstate movement of goods produced by other than Federal penal or correctional institutions and that have been purchased by the Federal Government.

Subpart 4–12.3—Contract Work Hours Standards Act (Other than Construction Contracts)

§ 4–12.302 Applicability.

Incidental installation: Below is quoted an excerpt from 18 Comp. Gen. 337 regarding the application of the former Eight-Hour Law to incidental installation. This decision applies equally in similar cases involving the Contract Work Hours Standards Act.

Contracts for supplies or equipment to be installed by the contractor where the article or equipment is purchased in a finished state at a fixed price, and installation is merely incidental to the purchase, are not subject to the eight-hour work limitation law of June 19, 1912, 37 Stat. 137, but when the installation is so part and parcel of the contract as to increase the cost materially, and is of such duration as to require or involve the employment of laborers or mechanics over a substantial period of time, the requirements of the statute are for application.

§ 4–12.303 Contract clause.

The contract clause set forth in § 1–12.303 shall be physically included in applicable contracts. Incorporation by reference is not compliance with the Act. Form AD–269 containing the clause is available from Central Supply.

§ 4–12.304 Variations and tolerances.

The applicability of the Contract Work Hours Standards Act is specified in Sections 102 and 103 thereof and in the regulations of the Secretary of Labor 29 CFR 5.12a, issued pursuant to the Act. Upon his own initiative or upon the request of any Federal agency, the Secretary of Labor may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. Any such requests shall be made through the Office of Plant and Operations.

§ 4–12.350 Deductions from contract payments for violations.

The contracting officer shall be responsible for determining the amount of unpaid wages and liquidated damages owing under the provisions of the Act. He shall also take such other actions as required by the Act and the regulations of the Secretary of Labor pursuant thereto, in connection with any violation, including making appropriate adjustments in such liquidated damages or relieving the contractor or subcontractor of liability for liquidated damages. Any recommendations to the Secretary of Labor shall be made through the Office of Plant and Operations.

Subpart 4–12.4—Labor Standards in Construction Contracts

§ 4–12.401 Statutory and regulatory requirements.

§ 4–12.401–1 Davis-Bacon Act.

Text of the Act is reproduced in § 4–52.203, et seq.

§ 4–12.401–2 Copeland Act.

Text of the Act is reproduced in § 4–52.174.

§ 4–12.401–3 Contract Work Hours Standards Act.

Text of the Act is reproduced in § 4–52.211, et seq.

§ 4–12.401–4 Department of Labor requirements.

The subject regulations are published in § 4–52.502 and copies may also be obtained from the Central Supply Section as Form AD–372.

§ 4–12.402 Applicability.

§ 4–12.402–2 Supply, service, maintenance, or other contracts involving construction.

If the proposed contract includes installation of equipment which involves a substantial amount of work, the contracting officer should determine whether the installation portion of the contract work will exceed the $2,000 minimum for the Davis-Bacon Act, based upon his estimate or, where appropriate, separate bid items for the installation and for the items to be installed. However, where the proposed contract includes installation of such item as steel shelves, not installed in such a manner as to become part of a building, it will not be subject to labor standards provisions applicable to construction, but will be subject to the applicable labor standards provisions for supply and service contracts.

§ 4–12.404 Administration and enforcement.

§ 4–12.404–1 General.

Agencies will be guided by this section and the regulations of the Secretary of Labor published at §§ 4–52.502 and 1–12.404 in enforcement matters. All reports and information submitted to the General Accounting Office and the Department of Labor shall be forwarded through the Office of Plant and Operations except as otherwise provided in this § 4–12.404.

§ 4–12.404–2 Wage determinations.

(a) *Requests and forecasts.* Requests for wage determinations shall be submitted by agencies directly to the office specified in § 1–12.404–2(a). Form DB–11 is obtained from the Central Supply Section. To the extent practicable, agencies using determinations shall furnish directly to the above office a forecast of the determinations anticipated to be required during each fiscal year. The information to be included is specified in § 1.4 of the Regulations of the Secretary of Labor (see § 4–52.502). Any significant change during the year should also be reported. A copy of each forecast, and of each report of significant change in plans shall be furnished to the Office of Plant and Operations.

(b) *Modifications.* In the absence of language in the invitation for bids to the contrary, a bid may not be accepted on the basis of wage rates different in any respect from those specified in the invitation (see 41 Comp. Gen. 593). However, provision may be made in the invitation that if the wage determination expires after opening of bids and prior to award, a current determination by the Secretary of Labor will be incorporated in the contract pursuant to the "changes" clause of the contract provisions. (See Comp. Gen. Dec. B–152313 dated September 9, 1963.)

§ 4–12.404–3 Additional classifications.

Reports of classification and requests for decisions of the Secretary of Labor on classifications shall be submitted through the Office of Plant and Operations.

§ 4–12.404–6 Payrolls and statements.

(a) *Weekly submission of copies of payrolls.* Contractors are required, by the labor standards provisions of the contract, to submit weekly to the contracting agency copies of all payrolls together with a statement that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. The payrolls and statements should be examined as may be necessary to assure compliance with the labor standards provisions of the contract. The Secretary of Labor has developed payroll forms SOL–184 and 185 for voluntary use of contractors and subcontractors on construction contracts subject to the Davis-Bacon and related Acts. These payroll forms, when properly filled out, meet all of the requirements of the Department of Labor regulations (29 CFR Parts 3 and 5), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts. Also, no other certification or statement other than that appearing on the payroll form SOL–184 is necessary as a prerequisite to partial or progress payments or payment in full to the contractor. Forms SOL–184 and 185 can be obtained from the Central Supply Section. See § 4–52.502 for regulations of the Secretary of Labor setting forth the requirements for examinations, investigations, and reports that may be required.

(b) *Statement of compliance.* No payment, advance, grant, loan, or guarantee of funds shall be approved unless there is on file with the agency a statement by the contractor that the labor standard provisions of the contract have been complied with, or that there is a substantial dispute with respect thereto. (See § 5.6 of regulations of the Secretary of Labor (29 CFR Part 5), § 4–52–502.) The payroll forms SOL–184 and 185, obtainable from the Central Supply Section, meet the requirements of this § 4–12.404–6(a), as well as the requirements of the weekly statement of compliance with the Copeland Regulations and of copies of weekly payrolls.

§ 4–12.404–7 Investigations.

The "Enforcement Manual" issued by the Department of Labor, shall be followed where applicable in investigations to assure compliance with labor standards requirements.

§ 4–12.404–8 Reports of violations.

Reports of violations required by § 1–12.404–8(a) shall be made through the Office of Plant and Operations. Semi-annual enforcement reports required by § 1–12.404–8(b) shall be made directly to the Solicitor of Labor, U.S. Department of Labor, Washington, D.C., 20210, by each agency which has taken enforcement measures during reporting period. Negative reports are not required. A copy of each such report shall be furnished to the Office of Plant and Operations.

§ 4–12.404–9 Suspension and deduction of contract payments.

See § 4–12.450 and Title 7 of the Administrative Regulations for Department procedure on disposition of amounts withheld.

§ 4–12.404–13 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours Standards Act.

The Contracting Officer shall take such action as required by the Act and the Regulations of the Secretary of Labor pursuant thereto in connection with any violation, including making appropriate adjustments in liquidated damages assessed, or in relieving the contractor or subcontractor of liability for liquidated damages, where the amount of the damages is $100 or less. Any recommendations to the Secretary of Labor shall be made through the Office of Plant and Operations.

§ 4–12.450 Irregularities and withholdings under the Davis-Bacon Act.

(a) *Purpose.* (1) The General Accounting Office is responsible for the following functions in connection with irregularities and withholdings under the Davis-Bacon Act: (See Comp. Gen. Dec. B3368, March 19, 1957.)

(i) For determining whether or not violations occurred in a sense that requires debarment.

(ii) For paying aggrieved employees amounts to which they are entitled when funds have been withheld from a contractor to cover such wage underpayment.

(iii) To settle claims of contractors based upon amount which may have been withheld.

(2) In determining the propriety of debarment action, the General Accounting Office must distinguish between technical and substantial violations:

(i) "Technical violations" are those which have resulted from inadvertence or legitimate disagreements concerning classification.

(ii) "Substantial violations" are those the intentional nature of which is demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Act.

(3) The General Accounting Office bases its decision on written evidence;

most of which is supplied by the agency having charge of the contract. Therefore it is important that precise and complete records be maintained. In addition, the General Accounting Office gives careful consideration to the administrative determinations and recommendations made by the agencies.

(b) *Procedure for processing cases.* The following procedures and suggestions, which are quoted from the Comptroller General's letter cited above, and which are designed to achieve greater efficiency in processing Davis-Bacon Act cases, shall be adhered to:

(1) In every instance where disregard of obligations to employees has been found, a comprehensive report, describing the nature and extent of irregularities, and presenting the evidence relied upon to establish their existence, is required. The essentials of such a report include (i) a chronological narration of the facts; (ii) a copy of any investigative report and exhibits, including payrolls submitted to the Government and other pertinent documentary evidence; (iii) copies of correspondence showing administrative action with respect to the exaction of compliance and actions taken or explanations proffered by offenders; and (iv) any additional information, evidence, or recommendations, believed to be useful in our determination.

(2) Such comprehensive reports are necessary in all instances, and they should be forwarded direct to the Claims Division unless required to be reported through the Department of Labor pursuant to its regulations. Failure to withhold monies for wage underpayments, or the fact that wage underpayments have been corrected, does not obviate furnishing factual reports.

(3) Reports should give definite information as to the finality of administrative determinations with respect to wage underpayments and as to contractors' compliance therewith. Until it can be demonstrated that administrative determinations of wage underpayments have become final in the sense that a contractor has acquiesced in them or has no further recourse through appeal, Federal payments to employees but of funds collected from a contractor not only would be hazardous but might result in improper payments. Also, an incurrence of expense to make such disbursements clearly would be inappropriate in any instance where Federal intervention might not actually be necessary to discharge the obligation imposed primarily upon contractors and subcontractors. In other words, the General Accounting Office should be advised as to how a determination of underpayment becomes finally binding upon a contractor and in what manner it is evident that a contractor thereafter refused to comply.

(4) Should wage underpayments be corrected by contractors or subcontractors to the satisfaction of the agency in charge of a contract, evidence of such corrective payments need not be furnished. An appropriate certification that adjustments have been verified will be satisfactory for purposes of the report.

(c) *Deductions for underpayment.* Where the contractor or subcontractor fails or refuses to pay employees the rate of wages as established in the contract, the contracting officer shall take action to suspend the payment of funds to such contractor until the violation is discontinued and/or until sufficient funds have been withheld to compensate the employees for the wages to which they are entitled.

(For fiscal accounting reports required in connection with this § 4–12.450, see Title 7 of the Administrative Regulations.)

§ 4–12.451 Instructions regarding labor provisions.

Upon award of a construction contract the successful bidder should be furnished a copy of the Regulations of the Secretary of Labor applicable to contracts covering Federally financed and assisted construction and other contracts subject to the Contract Work Hours Standards Act, Form AD–372. The contracting officer or his representative should thoroughly explain the requirements and the procedures for enforcement which will be followed by Government personnel. Attention should particularly be called to the requirement for weekly submission of payrolls and statements of compliance. If there is a representative of the contracting officer on the job site, responsibility for securing these documents may be delegated to him; otherwise the contractor should be required to mail these directly to the contracting officer.

Subpart 4–12.6—Walsh-Healey Public Contracts Act

§ 4–12.602 Applicability.

§ 4–12.602–3 Department of Labor regulations and interpretations.

Copies of "Walsh-Healey Public Contracts Act, Rulings and Interpretations," may be obtained free from the Wage and Hour and Public Contracts Division, Department of Labor, Washington, D.C., 20210.

§ 4–12.604 Responsibility of Contracting Officer.

Submission of protests to the Department of Labor for final determination as to whether or not a bidder is a manufacturer or regular dealer, and reports of Walsh-Healey Act violations shall be made through the Office of Plant and Operations. Posters, Form PC–13 and copies of the form letter Form WH–12, shall be obtained directly from the Department of Labor at the address in § 4–12.602–3. Report of award on Standard Form 99 shall be submitted directly to that office. If award is based on location of the contractor in a labor surplus area, pursuant to subpart 1–1.8 or § 1–2.407–6, the SF–99 shall be stamped "Preference Award" in the upper right corner.

§ 4–12.605 Contract clause.

Standard Form 32, General Conditions (Supply Contract) incorporates the required clause in § 1.12–605.

§ 4–12.650 Requests for exceptions or exemptions.

If it is determined that application of all or any part of the stipulations in a contract would seriously impair the conduct of Government business, a complete statement of the facts should be submitted to the Office of Plant and Operations. That Office will, if the facts justify, take the necessary steps to secure relief.

Subpart 4–12.8—Equal Opportunity in Employment

§ 4–12.801 Policy.

The policies and procedures of Chapter 9, Title 5, Administrative Regulations, shall be applicable to programs of this Department rather than Subpart 1–12.8.

Subpart 4–12.50—Defense Base Act

§ 4–12.5001 Contract requirement.

The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees engaged in a public work contract. A "public work" contract includes, among other things, any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including projects or operations under service contracts. (See §§ 4–52.243 and 4–52.195 to 4–52.197.)

§ 4–12.5002 Contract clause.

The following clause shall be included in all public work contracts to be performed outside the United States:

WORKMEN'S COMPENSATION INSURANCE

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651–1654). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable a clause similar to this clause imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

§ 4–12.5003 Waiver.

The Secretary of Labor may waive the applicability of the Defense Base Act with regard to any contract, work location or classification of employees. Questions with regard to applicability of the Act and requests for waivers shall be submitted to the Office of Plant and Operations.

PART 4–14—INSPECTION AND ACCEPTANCE

Subpart 4–14.1—Inspection

Sec.
4–14.107a Return of rejected goods.

Subpart 4–14.2—Acceptance

4–14.250 Use of private inspection, testing and grading services.

AUTHORITY: The provisions of this Part 4–14 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–14.1—Inspection

§ 4–14.107a Return of rejected goods.

Rejected material or equipment should be returned to the vendor at his expense. In returning rejected material, an itemized receipt signed by the vendor or his authorized representative should be obtained and filed with the record of the transaction. Upon the refusal of a contractor to remove or to accept the return of material which was rejected by the Government for failure to conform to the specifications, the Government acquires the right to resell the rejected material to cover storage and handling costs, provided that the material was properly rejected. (See Comp. Gen. Dec. B–138939, 4–24–59.)

Subpart 4–14.2—Acceptance

§ 4–14.250 Use of private inspection, testing and grading services.

Such services required for determining acceptability of purchased materials may be purchased only where it has been determined that there is no Government facility reasonably available for inspection, testing, or grading, and these services require the application of scientific principles or specialized techniques and equipment without direct Government supervision. Generally, payment for these services should not be based on time required to perform the services but on reports, results, or other units of work.

PART 4–15—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 4–15.3—Principles for Determining Applicable Costs Under Research Contracts With Educational Institutions

Sec.

4–15.306 Determination of indirect costs.
4–15.306–4 Overhead determinations acceptable under special circumstances.

AUTHORITY: The provisions of this Part 4–15 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–15.3—Principles for Determining Applicable Costs Under Research Contracts With Educational Institutions

§ 4–15.306 Determination of indirect costs.

§ 4–15.306–4 Overhead determinations acceptable under special circumstances.

In lieu of the method authorized in § 1–15.301(d), agencies may use one of the following methods:

(a) Allowance of a predetermined fixed percentage of the total reimbursable direct cost incurred, as authorized by Public Law 87–638 (76 Stat. 437);

(b) Allowance of a predetermined fixed percentage of the total reimbursable direct salary cost incurred, as authorized by Public Law 87–638 (76 Stat. 437).

PART 4–16—PROCUREMENT FORMS

Subpart 4–16.1—Forms for Advertised Supply Contracts

Sec.
4–16 Terms, conditions, and provisions.
4–16.150 Invitation, Bid, and Award (Under $10,000) (Agriculture Department Form 375).
4–16.151 Invitation, Bid, and Award (Supply-Service) (Agriculture Department Form 375).

Subpart 4–16.3—Purchase and Delivery Order Forms

4–16.350 Purchase Order (Agriculture Department Form 38).

Subpart 4–16.4—Forms for Advertised Construction Contracts

4–16.402–2 Contracts estimated to exceed $2,000 but not to exceed $10,000.
4–16.402–3 Contracts estimated to exceed $10,000.
4–16.404 Terms, conditions, and provisions.

Subpart 4–16.8—Miscellaneous Forms

4–16.804 Report on procurement by civilian executive agencies.
4–16.850 Contract for Services (Agriculture Department Form 225).
4–16.851 General Provisions (Service Contract) (Agriculture Department Form 377).
4–16.852 Request for concurrence in delegation of procurement contracting authority.
4–16.853 Instructions and format for preparation of report on preference procurement in labor surplus areas.

Subpart 4–16.9—Illustrations of Forms

Sec.
4–16.903 Department of Justice forms.
4–16.903–DJ1500 Identical Bid Report for Procurement.
4–16.950 Department of Agriculture forms.
4–16.950–38 Form AD–38: Purchase Order.
4–16.950–225 Form AD–225: Contract for Services.
4–16.950–263 Form AD–263: Research and Service Contract.
4–16.950–264 Form AD–264: General Provisions for Research and Service Contracts.
4–16.950–265 Form AD–265: Cost-reimbursement Provisions for Research and Service Contracts.
4–16.950–267 Form AD–267: Contractor's Claim for Reimbursement Under Cost-reimbursement Research and Service Contracts.
4–16.950–268 Form AD–268: Schedule of Salaries and/or Wages Paid.
4–16.950–370 Form AD–370: Federal, State and Local Taxes.
4–16.950–375 Form AD–375: Invitation, Bid, and Award (Under $10,000).
4–16.950–376 Form AD–376: Invitation, Bid, and Award (Supply-Service).
4–16.950–377 Form AD–377: General Provisions (Service Contracts).

Subpart 4–16.50—Forms for Advertised Services Contracts

4–16.5000 Invitation, Bid, and Award (Supply-Service) (Agriculture Department Form 376).

Subpart 4–16.51—Forms for Negotiated Research and Marketing Contracts

4–16.5100 Contract forms.

AUTHORITY: The provisions of this Part 4–16 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

Subpart 4–16.1—Forms for Advertised Supply Contracts

§ 4–16.104 Terms, conditions, and provisions.

(a) Standard contract provisions which either are to be substituted for those in the standard forms pending revision thereof or are for use in specific circumstances are stated in Parts 1–7 and 4–7 of this title.

(b) Additional terms, conditions, and provisions may be used as necessary except the use of any that are inconsistent with those contained in standard forms must have the prior approval of the Director of Plant and Operations.

(c) Keep additional contract provisions as few and as brief as possible. Brevity and clarity in contract provisions will promote interest by prospective bidders. Include provisions covering only probable situations, and then only if advance agreement thereon is necessary.

Subpart 4–16.1—Forms for Advertised Supply Contracts

§ 4–16.150 Invitation, Bid and Award (Under $10,000) (Agriculture Department Form 375).

(a) *Use.* Agriculture Department Form 375, Invitation, Bid, and Award (Under $10,000), is prescribed for optional use in lieu of Standard Form 33 for advertised supply contracts under $10,000.

(b) *Orders for form.* Form AD–375 is available from Central Supply Section, Service Operations Division, Office of Plant and Operations.

(c) *General.* AD–375 is a one-page supply contract form and contains the bid terms and conditions on the front and general provisions applicable to supply contracts under $10,000 on the reverse.

§ 4–16.151 Invitation, Bid, and Award (Supply-Service) (Agriculture Department Form 376).

(a) *Use.* Agriculture Department Form 376, Invitation, Bid, and Award (Supply-Service) is prescribed for optional use in lieu of Standard Form 33 for advertised supply contracts over $10,000. (See § 4–16.5000.)

(b) *Orders for form.* Form AD–376 is available from Central Supply Section, Service Operations Division, Office of Plant and Operations.

(c) *General.* AD–376 contains the bid terms and conditions on the reverse and is to be used in conjunction with the Standard Form 32, General Provisions (Supply Contract), for supply contracts.

Subpart 4–16.3—Purchase and Delivery Order Forms

§ 4–16.350 Purchase Order (Agriculture Department Form 38).

(a) *Required use.* Agriculture Department Form 38, Purchase Order, established pursuant to Bureau of Federal Supply Circular Letter B–69, October 1, 1947, is prescribed for use by all agencies of the Department for purchase order purposes in lieu of Standard Forms 147 and 148 (See § 1–16.301–2), except where SF–44 is used. Other purchase order forms for specialized procurements may be used with the approval of the Director of Plant and Operations. Form AD–38 shall conform to the format in § 4–16.950 and with the standardization and use requirements outlined in this §4–16.350.

(b) *Type of form.* This form may be printed in single copies or constructed in "snap-out" sets interleaved with one-time carbon paper.

(c) *Number of copies.* The form consists basically of five parts. Provision is made for additional copies, if needed.

(d) *Identification of colors.* The various copies are identified by the following colors and may be further identified by wording, appropriate to the use of each copy, placed in the lower-left corner (this space on the original will carry suitable billing or invoice instructions as appropriate):

Copy, color, and use
Original, White, to vendor.
Second, Cherry, for accounting purposes.
Third, Yellow, issuing-office copy.
Fourth, Green, receipt copy.
Fifth, Blue, as may be required.
Sixth (optional), Goldenrod, property accountability copy.

Additional copies, if required, will be white.

(e) *Printing.* At the top of the form, beneath "Purchase Order, U.S. Department of Agriculture," may appear the agency name. Names of divisions or other subdivisions and office locations are to be printed only when clearance has been granted by the Office of Information. The space on the original copy designated for "Billing Instructions" may contain a printed address when the volume of billing to a single office warrants. Except as provided herein, no additions or omissions are to be made unless advance approval is obtained from the Office of Plant and Operations.

(f) *Orders for form.* As the Office of Information arranges for the procurement of AD–38, orders should be submitted to that Office 3 months in advance of the need to prevent running short of supplies. No orders for field printing of the form shall be released without clearance with the Office of Information. All orders should be for a 12-month supply except where the purchase of such a supply would be uneconomical.

(g) *Identification of orders issued in Washington, D.C.* It is necessary to establish some uniformity in the identification of Washington-issued purchase orders in order to facilitate the identification of vouchers, invoices, and correspondence from vendors which, when received at various points within the Department, bear no addressee other than "United States Department of Agriculture" and no inside identification other than a purchase order number. Therefore, each order should bear appropriate identification as follows:

(1) *Form of identification.* Each order shall be identified in the space provided for that purpose by a serial number, followed by a dash (—) and agency symbol. Suffixes as required may be assigned in accordance with agency practices.

(2) *Agency symbols.* The following symbols are established for the use of agencies in the Department which issue purchase orders in Washington, D.C.

Agency:	*Symbol*
Agricultural Marketing Service	AMS.
Agricultural Research Center	ARC.
Agricultural Research Service	ARS.
Agricultural Stabilization and Conservation Service	ASCS.
Farmers Home Administration	FHA.
Federal Crop Insurance Corporation	FCIC.
Federal Extension Service	FES.
Foreign Agricultural Service	FAS.
Forest Service	FS.
Office of Management Services	OMS.
Office of the Secretary (Central Supply Section)	P&O.
Rural Electrification Administration	REA.
Soil Conservation Service	SCS.

(3) *Use of symbols to identify invoices and vouchers.* A copy of the above key to the use of agency symbols should be furnished for ready reference purposes to employees in Washington concerned with the identification of vendors' invoices, vouchers, etc., in order that distribution to the proper office may be facilitated.

Subpart 4–16.4—Forms for Advertised Construction Contracts

§ 4–16.402–2 Contracts estimated to exceed $2,000 but not to exceed $10,000.

Where bids are invited on Standard Form 19 and the acceptable bid exceeds $10,000, the Standard Form 19 should nevertheless be used for the contract.

§ 4–16.402–3 Contracts estimated to exceed $10,000.

(a) *Preparation of Standard Form 20.* The invitation for bids, SF–20, may be considered as a cover sheet on which is to be listed all of the attachments which form a part of the bid invitation, or may be used as a notice to prospective bidders in accordance with § 4–2.250. In addition, space is provided for necessary information for the bidder which will not form a part of the contract specifications or conditions but is required by him in submitting his bid. Thus the following paragraphs of Standard Form 20 would include data as indicated:

Information regarding bidding material, bid guarantee, and bonds. Here would be shown information as to where plans and specifications may be obtained (if not attached); deposits required therefor; the amount of bid bond required with the bid; the amount of performance and payment bond to be required of the successful bidder; whom to contact and when for inspection of the site; and any data needed by the bidder to enable him to prepare and submit his bid. The information would supplement that in SF–22, "Instructions to Bidders" which should be attached to the SF–20.

Description of work. The work is to be described sufficiently to show clearly the scope of the job. In addition, following the description of the work, there must be specifically stated the specifications, conditions, drawings, etc., which form a part of the bid invitation and are to be a part of the resultant contract. These should be listed by title and inclusive page numbers or other identification so that there may be no question as to what papers form a part of the bid invitation and contract.

(b) *Preparation of Standard Form 21.* It is customary to complete the bid form, SF–21, to the extent feasible before sending it with the invitation for bids. As a general rule, the blocks for the address to which bids are to be sent, description of work, location, acceptance time, commencement and completion of work time, and directions for submitting bids, should be completed, and the schedule of items should be included by a reference thereto on the face of the bid form.

(c) *Use of Standard Form 22.* This form may also be used as an attachment when notices are sent to prospective bidders pursuant to § 4–2.250.

(d) *Preparation of Standard Form 23.*—(1) *Contract number.* See Title 7, Department of Agriculture Administrative Regulations, paragraph 100b.

(2) *Contract description.* The description of the work to be performed under the spaces "Contract For" and "Place" should be identical with that shown in the invitation for bids.

(3) *Amount of contract.* There should be shown in this space the total amount computed on the basis of the estimated and actual quantities shown in the bid schedule and the unit prices bid.

(4) *Administrative data.* This space may be used for such purposes as billing instructions, designation of authorized representatives of the contracting officer, etc.

(5) *Statement of work.* It is particularly important that the information in this space be carefully prepared. Every attachment which is to be a part of the contract must be specifically identified, i.e., specifications should be listed by inclusive page numbers, the schedule of items should be appropriately titled and listed hereunder, plans and drawings should be listed by title and sheet numbers, and any special conditions appropriately listed by title and inclusive page numbers.

(6) *Contract time.* Time for starting and completing work shall be stated in the special conditions of the invitation for bids. This will ordinarily be stated in terms of the number of days from date of receipt of the notice to proceed. For instance, assuming the contract time to be 90 days, these spaces would be completed somewhat as follows: "Work shall be started within ten days from date of receipt of notice to proceed", or "Work shall be completed within 90 days from date of receipt of notice to proceed."

(7) *Alterations of contract.* In the spaces titled "Alterations" there should be included any changes in the contract specifications which are made between the time of the bid opening and contract award. Such changes would be the same type as those authorized by Article 3 of SF–23A for changes subsequent to award of the contract.

§ 4–16.404 Terms, conditions, and provisions.

(a) Standard contract provisions which either are to be substituted for those in the standard forms pending revision thereof or are for use in specific circumstances are stated in Parts 1–7 and 4–7 of this title.

(b) Additional terms, conditions, and provisions may be used as necessary except the use of any that are inconsistent with those contained in standard forms must have the prior approval of the Director of Plant and Operations.

(c) Keep additional contract provisions as few and as brief as possible. Brevity and clarity in contract provisions will promote interest by prospective bidders. Include provisions covering only probable situations, and then only if advance agreement thereon is necessary.

Subpart 4–16.8—Miscellaneous Forms

§ 4–16.804 Report on procurement by civilian executive agencies.

Standard Form 37, Report on Procurement by Civilian Executive Agencies, shown at § 1–16.901.37, shall be used to make reports. This form may be requisitioned from the Central Supply Section, Service Operations Division, Office of Plant and Operations. Reports shall be prepared by each agency for each semi-annual period (January 1 through June 30, and July 1 through December 31) and submitted in duplicate to the Procurement and Contract Management Division, Office of Plant and Operations, by the 20th of the month immediately following the close of each semi-annual period. Agencies conducting special programs involving the procurement of property or services which, in their opinion, should not be included in the report may submit detailed justifications for exemption to the Director of Plant and Operations, for his approval and appropriate submission to the Administrator of General Services for action.

§ 4–16.850 Contract for Services (Agriculture Department Form 225).

(a) *Use.* Agriculture Department Form 225, Contract for Services is prescribed for Departmental use for contracts under $2,500 where a written agreement is desired to cover continuing needs for services and supplies. (See § 4–3.409.)

(b) *Orders for form.* Form AD–225 is available from Central Supply Section, Service Operations Division, Office of Plant and Operations.

§ 4–16.851 General Provisions (Service Contract) (Agriculture Department Form 377).

(a) *Use.* Agriculture Department Form 377, General Provisions (Service Contracts), is prescribed for use in conjunction with Form AD–376 for advertised contracts for services including aerial photography. (See § 4–16.5000.)

(b) *Orders for form.* Form AD–377 is available from Central Supply Section, Service Operations Division, Office of Plant and Operations.

(c) *General.* Form AD–377 contains provisions generally applicable to all contracts for services. Additional provisions not inconsistent therewith to cover special requirements of agency programs may be added.

§ 4–16.852 Request for concurrence in delegation of procurement contracting authority.

UNITED STATES DEPARTMENT OF AGRICULTURE
(NAME OF AGENCY)

Washington, D.C.
Date: ----------

To: Director of Plant and Operations.
From: Head of Agency.
Subject: Request for Concurrence in the Delegation of Procurement Contracting Authority.

In accordance with the provisions of AGPR 4–1.350–4; your concurrence is requested in the delegation of procurement contracting authorities to the (incumbents of the following positions) (following employees):

Name and address of office [1]	Amount needed	Title of position
Administrative Services Division----------	$15,000	Chief, Administrative Services Division, Contract Specialist.

Name and address of [2] office	Amount needed	Name of employee	Title of employee
Willow Run Road Project, Parsons, W. Va----------	$5,000	Samuel Brown--------	Project Director.

[1] This form of listing should be followed if delegation is to be made to the incumbent of a position.
[2] This form of listing should be followed if delegation is to be made to an individual.

It will be to the advantage of the agency to exercise contracting authority to the extent requested in the interest of expediting the processing of contracts covering the purchase of miscellaneous supplies, equipment, and services. It is believed that amounts specified above will cover our needs at the present time. The above employee is an experienced contracting officer and is well qualified to perform contracting operations of the size for which authority is requested.

JOHN SMITH.

§ 4–16.853 Instructions and format for preparation of report on preference procurement in labor surplus areas.

INSTRUCTIONS AND FORMAT FOR PREPARATION OF REPORT ON PREFERENCE PROCUREMENT IN LABOR SURPLUS AREAS

Contracts awarded during the period ----------, as the result of set-aside, tie-bid, or other preference procedure.[1]

(Col. 1) States (include Puerto Rico) containing labor surplus areas in which preference contracts awarded.	(Col. 2) Labor surplus areas in which preference contracts awarded will be performed. Underline names of persistent labor surplus areas as shown below.	(Col. 3) Total dollar amount of such contract awards.
States [2]	Areas [2]	Dollars
Alabama----------	Birmingham----------	5,000
	Gadsden----------	6,000
	Mobile----------	7,000
Alaska----------	Anchorage----------	10,000
	Beckley----------	15,000
West Virginia----------	Bluefield----------	20,000
	Morgantown----------	25,000
	Wheeling----------	30,000
Subtotal—Dollar amount of contracts awarded	persistent labor surplus areas----------	106,000
Total----------	----------	118,000

[1] To be reported quarterly. Indicate in report the reporting activity, location, etc.
[2] Arrange States and areas within States alphabetically.

Subpart 4–16.9—Illustrations of Forms

§ 4–16.903 Department of Justice forms.

(a) *General.* Subpart 1–1.16 prescribes procedures for submission of reports to the Attorney General in accordance with Executive Order No. 10936 of April 24, 1961, when identical bids are received. (See also Subpart 4–1.16.)

(b) *Required use.* Department of Justice Form DJ–1500 is prescribed for use by all agencies for submitting identical bid reports to the Attorney General.

(c) *Order for forms.* Form DJ–1500 is available from Central Supply Section, Service Operations Division, Office of Plant and Operations.

§ 4–16.903–DJ1500 Form DJ–1500: Identical Bid Report for Procurement.

NOTE: Form filed as part of the original document.

§ 4–16.950 Department of Agriculture forms.

The Department of Agriculture (AD) procurement forms are illustrated in this section to show their text, format, and arrangement and to provide a ready source of reference. The subsection numbers in this section correspond with the AD form numbers. Thus, in subsection 38 of this § 4–16.950 appears Form AD–38. These forms are available by requisition on Form AD–14 from the Central Supply Section, Service Operations Division, Office of Plant and Operations, as prescribed in § 4–5.5701–4 of this chapter.

§ 4–16.950–38 Form AD–38: Purchase Order.

NOTE: Form filed as part of the original document.

§ 4–16.950–225 Form AD–225: Contract for services.

NOTE: Form filed as part of the original document.

§ 4–16.950–263 Form AD–263: Research and Service Contract.

NOTE: Form filed as part of the original document.

§ 4–16.950–264 Form AD–264: General Provisions for Research and Service Contracts.

NOTE: Form filed as part of the original document.

§ 4–16.950–265 Form AD–265: Cost-reimbursement Provisions for Research and Service Contracts.

NOTE: Form filed as part of the original document.

§ 4–16.950–267 Form AD–267: Contractor's Claim for Reimbursement Under Cost-reimbursement Research and Service Contracts.

NOTE: Form filed as part of the original document.

§ 4–16.950–268 Form AD–268: Schedule of Salaries and/or Wages Paid.

NOTE: Form filed as part of the original document.

§ 4–16.950–370 Form AD–370: Federal, State and Local Taxes.

NOTE: Form filed as part of the original document.

§ 4–16.950–375 Form AD–375: Invitation, Bid, and Award (Under $10,000).

NOTE: Form filed as part of the original document.

§ 4–16.950–376 Form AD–376: Invitation, Bid, and Award (Supply-Service).

NOTE: Form filed as part of the original document.

§ 4–16.950–377 Form AD–377: General Provisions (Service Contract).

NOTE: Form filed as part of the original document.

Subpart 4–16.50—Forms for Advertised Services Contracts

§ 4–16.5000 Invitation, Bid, and Award (Supply-Service) (Agriculture Department Form 376).

(a) *Use.* Agriculture Department Form 376, Invitation, Bid, and Award (Supply-Service), is prescribed for Departmental use for advertised contracts for services including aerial photography.

(b) *Orders for form.* Form AD–376 is available from Central Supply Section, Service Operations Division, Office of Plant and Operations.

(c) *General.* AD–376 contains the bid terms and conditions on the reverse and is to be used in conjunction with the Agriculture Department Form 377, General Provisions (Service Contract). (See § 4–16.851.)

Subpart 4–16.51—Forms for Negotiated Research and Marketing Contracts

§ 4–16.5100 Contract forms.

(a) *Use.* The forms listed below shall be used in connection with the contract types indicated:

(1) *Firm fixed-price.*

Form AD–263, Research and Services Contract
Form AD–264, General Provisions

(2) *Cost-reimbursement.*

Form AD–263, Research and Services Contract
Form AD–264, General Provisions
Form AD–265, Cost-Reimbursement Provisions
Form AD–267, Contractor's Claim for Reimbursement

In addition, Form AD–268, Schedule of Salaries and/or Wages Paid, may be used by contractors in conjunction with Form AD–267 as evidence of payments made.

(b) *Orders for forms.* The forms listed are available from Central Supply Service, Service Operations Division, Office of Plant and Operations.

PART 4–17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Subpart 4–17.1—General

§ 4–17.102 General policy.

(a) The Department has been delegated certain contracting authority by Executive Order 10789 (see § 1–17.502) in connection with national defense functions. Use of this authority is subject to prior approval of the Director of Plant and Operations.

(b) In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, agencies shall require contractors to use ratings and allotment authority to support defense needs to the extent required by DMS Reg. 1, "Basic Rules of the Defense Materials System (Revised)" (32A CFR DMS Reg. 1) and BDSA Reg. 2, "Basic Rules of the Priorities System" (32A CFR BDSA Reg. 2), and all other applicable regulations and orders of the Business and Defense Services Administration, Department of Commerce.

(5 U.S.C. 22, 40 U.S.C. 486(c))

PART 4–30—CONTRACT FINANCING

Subpart 4–30.4—Advance Payments

Sec.
4–30.400 Scope of subpart.
4–30.406 Responsibility—delegation of authority.

Subpart 4–30.50—Special Contract Financing Authorities

4–30.5001 Contracts with states.
4–30.5002 Contracts pursuant to the Research and Marketing Act of 1946, as amended, 7 U.S.C. 427i and 1624.

AUTHORITY: The provisions of this Part 4–30 issued under 5 U.S.C. 22, 40 U.S.C. 486 (c).

Subpart 4–30.4—Advance Payments

§ 4–30.400 Scope of subpart.

Subpart 1–30.4 shall apply only to those contracts of this Department executed pursuant to the authority of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 255).

§ 4–30.406 Responsibility — delegation of authority.

Heads of agencies or their designees are delegated the authority to make the determination to make advance payments pursuant to section 305 of the Act, based upon written findings which, in accordance with Section 307(c), shall be final and available within the agency for a period of at least six years following the date of the determination. Designees shall be responsible headquarters or field officials other than the contracting officer.

Subpart 4–30.50—Special Contract Financing Authorities

§ 4–30.5001 Contracts with states.

Under circumstances where the State requires advance payment and contracting with the State is to the Government's advantage, advance payments may be made. (Comp. Gen. Dec. B–35670 of 7–16–43 and B–36099 of 8–14–43.)

§ 4–30.5002 Contracts pursuant to the Research and Marketing Act of 1946, as amended, 7 U.S.C. 427i and 1624.

The Act provides that advance, progress, or other payments may be made without regard to the provisions of section 3648, Revised Statutes. Advance payments may be made in any amount not exceeding the contract price, provided: (a) adequate security for such advance payments is obtained when the contract is being made with other than public organizations, (b) the amount of the advance payment is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (c) such advance payment is necessary and appropriate in order to contract for the required work. Contract provisions must state the amount of the advance payment. Performance bonds on prescribed standard forms will satisfy requirements for adequate security.

PART 4–50—DISPUTES AND APPEALS POLICY AND PROCEDURE

Sec.

4–50.000 Scope of part.

Subpart 4–50.1—Disputes

4–50.101 Policy.
4–50.102 Questions of fact.
4–50.103 Determination of questions by mutual agreement.
4–50.104 Decisions by contracting officer.
4–50.104–1 General.
4–50.104–2 Format.
4–50.105 Record of evidence to be maintained.

Subpart 4–50.2—Contract Appeal Procedure

4–50.201 Appeals.
4–50.201–1 Eligible contractors.
4–50.201–2 Form and contents of notice of appeal.
4–50.201–3 Transmittal.
4–50.202 Board of Contract Appeals.
4–50.202–1 Membership.
4–50.202–2 Notice to parties.
4–50.202–3 Quorum.
4–50.202–4 Function of the Board.
4–50.202–5 Lack of prosecution.
4–50.203 Request by contracting officer for hearing.
4–50.204 Consideration by Board without hearing.
4–50.205 Location of hearings.
4–50.206 Notice of hearings.
4–50.207 Scope of procedures.
4–50.208 Absence of parties.
4–50.209 Pre-hearing arrangements.
4–50.210 Conduct of hearings.
4–50.211 Findings and decision of the Board.
4–50.212 Finality of decision.

AUTHORITY: The provisions of this Part 4–50 issued under 5 U.S.C. 22, 40 U.S.C. 486(c).

§ 4–50.000 Scope of part.

This part prescribes policy and procedure for the handling of questions of fact and disputes thereon arising under contracts.

Subpart 4–50.1—Disputes

§ 4–50.101 Policy.

It is the policy of the Department to handle questions of fact and disputes thereon arising under contracts in a fair, considerate and expeditious manner, so as to assure prompt and equitable decisions. The rendering of such decisions shall be performed in accordance with the procedures herein, recognizing that their application requires the utmost in tact and sound judgment. It is emphasized that by the inclusion of the standard disputes clause in a contract, the parties have agreed upon a procedure to be followed when disagreements arise thereunder, and failure to pursue these administrative procedures and exhaust all the remedies so provided may prejudice the rights of the contractor otherwise to enforce such claims in the courts.

§ 4–50.102 Questions of fact.

The general provisions of Standard Forms 23A and 32 specifically indicate several questions as being questions of fact. In general terms, any question which involves the submission of evidence to enable a decision is a question of fact whereas any question which does not require the introduction of evidence to form a decision is a question of law. For instance, the interpretation of the intent or meaning of contract provisions involves questions of law but determinations as to whether the contractor has complied with contract provisions usually involve the introduction of evidence and thus are questions of fact.

§ 4–50.103 Determination of questions by mutual agreement.

Within the terms of the contract, it is the responsibility of the contracting officer to resolve by mutual agreement with the contractor a variety of questions of fact. These may arise either before or after all payments due under the contract are believed to have been made, in such problem areas as price adjustments, change in delivery time, rejection of materials, or similar matters in connection with the administration of contract provisions. A tactful and cooperative approach by the contracting officer to the contractor's problem will do much to avoid formal protests and claims. In the majority of cases, a satisfactory agreement can be reached if the contractor has been fully informed of the specific contract provisions pertinent to the questions involved and the rights of the contractor and the Government with respect thereto. When questions are settled in this manner, the agreement should be documented for record purposes in the form of a letter or memorandum of agreement. If, however, the contractor is dissatisfied with explanations or determinations given and an agreement cannot be successfully negotiated, he should be referred to the contract provisions regarding disputes and advised to present his claim in writing to the contracting officer. The contractor shall be given an opportunity to present to the contracting officer oral arguments or evidence in support of his claims, if he so desires. It is particularly important that the claim be in writing if it is in regard to a matter which the contract requires to be in writing. Decisions will be rendered in accordance with § 4–50.104.

§ 4–50.104 Decisions by contracting officer.

§ 4–50.104–1 General.

(a) Except as may be otherwise specifically provided in a contract, any dispute concerning a question of fact arising under a contract which is not disposed of by agreement shall be decided by the contracting officer who shall reduce his decision to writing and mail by certified mail, return receipt requested, or otherwise furnish a copy thereof, to the contractor. Such decisions shall be made in the format prescribed in § 4–50.104–2.

(b) Before making his decision, the contracting officer shall consider such oral or written argument or evidence as the contractor presents and shall conduct such investigation as may be necessary to ascertain the facts and shall appropriately document the findings. The advice and assistance of the Office of General Counsel and Office of Plant and Operations should be requested whenever disputes involve complicated questions of fact or involve questions of law. Law questions may be considered in making the decision when necessary to a complete adjudication of the claim although any decision on a question of law cannot be final.

(c) For the purposes of the contracting officer's Findings and Decision, the following definitions apply:

(1) A "fact" is an occurrence or an event.

(2) "Evidence" is any material tending to prove or disprove a fact.

(3) "Finding" is the conclusion reached after the examination or consideration of the facts.

(4) "Decision" is the judgment or answer rendered.

(d) Where questions of fact are in dispute, each question or issue raised in the contractor's claim should be separately considered in the findings and a decision made on each individual issue before a summary decision is reached on the over-all claim. It is extremely important that there be no misunderstanding as to the specific points at issue. Where the claim is not clear, the contracting officer should request a clarification as to what points are at issue prior to his analysis of the claim.

§ 4–50.104–2 Format.

(Letterhead)

(Date)

CONTRACTING OFFICER'S FINDINGS AND DECISION

Introduction. The introduction consists of a complete description of the project by name, description, and location, the contractor's name and address, dollar amount of the contract, the contract number, and the name and address of the Contracting Officer.

Contractor's Claim. State the amount the contractor is claiming (in dollars and cents and/or in time) and briefly state the reasons presented by the contractor as a basis for the claim. Attach a copy of the claim as an exhibit. The purpose of this statement before continuing with the Findings is to indicate at the outset exactly what the over-all claim or dispute involves.

Findings. Each specific issue that can be handled separately from other issues in the claim should be given a claim number and descriptive title for ready identification and correlated with the attached copy of the claim. Similarly, where issues cannot be logically considered separately, they should be grouped together under a descriptive title and claim number. Each claim should then be dealt with to completion as indicated below before the next is introduced.

(a) *Contract Requirements.* Include all contract provisions and specifications that are applicable in resolving each of the points at issue. In the interest of brevity and avoiding repetition, it is usually desirable to make references to exhibits or to footnotes rather than quoting the entire provision or specification. Direct quotations may be used when necessary for clarity or emphasis.

(b) *Facts.* A narrative recitation of the evidence and all facts of performance pertaining to the issue must be made. Material needed to prepare the narrative may be obtained from many sources such as, but not limited to, records or any other evidence submitted by the contractor; statements from expert witnesses or persons with knowledge of the issue in dispute; job diaries, engineers' field books, time and payroll records, suppliers' delivery records, contract modifications, etc. If statements are obtained from persons with knowledge of the issue in dispute, it is preferable that they be in the form of affidavits. These may be attached as exhibits and referenced in appropriate places, or direct quotations from the exhibits may be included if necessary for clarity or emphasis.

(c) *Analysis.* Each issue raised by the contractor must be weighed against the contract requirements and the facts. The results of this analysis constitute the contracting officer's finding on the claim.

Decision of the Contracting Officer. Each analysis of the issues is the basis for a respective portion of the decision. If neither additional payment or performance is allowed, so indicate. If additional payment and/or performance time is allowed, itemize the basis therefor and show the totals for the entire claim. Conclude the decision with the following paragraph as required by § 1–1.318:

"This decision is made in accordance with the Disputes clause and shall be final and conclusive as provided therein, unless, within thirty days from the date of receipt of this decision, a written notice of appeal addressed to the Secretary of Agriculture is mailed or otherwise furnished to the Contracting Officer. The notice of appeal, which is to be signed by you as the contractor or by an attorney acting on your behalf, and which may be in letter form, should indicate that an appeal is intended, should refer to this decision and should identify the contract by number. The notice of appeal may include a statement of the reasons why the decision is considered to be erroneous."

§ 4–50.105 Record of evidence to be maintained.

The contracting officer shall maintain a complete record of the evidence upon which his decision is based.

Subpart 4–50.2—Contract Appeal Procedure

§ 4–50.201 Appeals.

§ 4–50.201–1 Eligible contractors.

(a) Appeals may be taken from decisions of contracting officers of the Department involving disputed questions of fact under contracts the terms of which provide that such appeals may be made to the head of the Department or his duly authorized representative, for:

(1) the construction, alteration or repair of public buildings or works, or

(2) the purchase of administrative and operating supplies, equipment, materials or services.

(b) Such appeals shall be taken by filing a notice of appeal with the Secretary or the contracting officer within the time prescribed in the contract.

§ 4–50.201–2 Form and contents of notice of appeal.

The notice of appeal shall be in writing but need not follow any prescribed form. It may be in the form of a letter. It should indicate the decision from which the appeal is being taken, the date of the decision, and the contract number. The notice of appeal should state whether the contractor desires to appear or be represented at a hearing before the Board, and should contain a request that such a hearing be held.

§ 4–50.201–3 Transmittal.

Upon receipt of the notice of appeal, the officer receiving such notice will endorse the date of its receipt thereon and will immediately forward it through agency channels to the Director of Plant and Operations for Board of Contract Appeals action.

§ 4–50.202 Board of Contract Appeals.

§ 4–50.202–1 Membership.

The Board of Contract Appeals shall be designated by the Administrative Assistant Secretary for each case and be composed of not less than three members as follows: One member from the office of the General Counsel, who shall serve as Chairman, one member from the Office of Plant and Operations, who shall serve as Secretary, and one member from the Department experienced in the subject matter of the work involved in the contract. Other members from the Department may be designated upon recommendation by the Director of Plant and Operations. No member shall have been directly involved in the formulation or administration of the contract in dispute. An alternate may be designated by the Administrative Assistant Secretary for any Board member who dies, or is absent, or disqualified. The Director of Plant and Operations shall, in consultation with the agencies involved, determine availability of employees best qualified to serve on the Board and advise the Administrative Assistant Secretary thereof together with his recommendations for composition of the Board.

§ 4–50.202–2 Notice to parties.

(a) Upon receipt of an appeal from a contracting officer's decision, the Director of Plant and Operations shall:

(1) Arrange for designation of the Board as provided in § 4–50.202–1,

(2) Notify the contracting officer of such appeal and require him to forward within 20 calendar days the necessary copies of his decision, findings of fact, supporting data, correspondence and other data revelant to the dispute,

(3) Refer the appeal together with all pertinent information to the Board of Contract Appeals, and

(4) Notify the contractor that his appeal has been received and, if he has not requested a hearing, that he may

(i) Have one before the Board upon request within a specified time,

(ii) Submit the case on written argument and evidence, or

(iii) Have the case decided on the basis of the record.

(b) The contractor shall be furnished at the same time a copy of this subpart 4–50.2 and such further instructions as may be appropriate.

§ 4–50.202–3 Quorum.

Except as may be otherwise provided in the designation of the Board, two members shall constitute a quorum.

§ 4–50.202–4 Function of the Board.

The Board shall consider and determine contract appeals in accordance with the provisions of this subpart. In addition to deciding questions of fact, the Board may, in its discretion, hear, consider, and decide related questions of law necessary for the complete adjudication of the issues in dispute although any decision on a question of law cannot be final.

§ 4–50.202–5 Lack of prosecution.

Where the contractor does not, within a reasonable time, take the necessary action to prosecute his appeal in accordance with this subpart, the Board may, upon reasonable notice, dismiss the appeal for lack of prosecution.

§ 4–50.203 Request by contracting officer for hearing.

If a hearing is not requested by the contractor, the contracting officer may request that a hearing be held by forwarding such a request in writing to the Board.

§ 4–50.204 Consideration by board without hearing.

If a hearing is not requested by the contractor or by the contracting officer, the Board will proceed to a determination on the basis of the record then before it, together with such a brief as the contractor may desire to submit and a reply brief submitted by the contracting officer. The Board will instruct the parties with respect to the time within which such briefs must be submitted and served upon the other parties.

§ 4–50.205 Location of hearings.

Hearings will be held at the Department of Agriculture, Washington, D.C., unless in the opinion of the Board, holding of a hearing elsewhere is justified, considering (a) the amount involved in the appeal, (b) the relative cost of holding a hearing in Washington, D.C. or elsewhere, and (c) any factors indicating that holding of a hearing at a requested location is necessary to assure equitable settlement of the case.

§ 4–50.206 Notice of hearings.

The contractor and the representatives of the Government shall be given at least 20 days' notice in writing of the time and place of any hearing scheduled by the Board. If it finds that the time fixed is inconvenient to the parties, the Board may reschedule the time.

§ 4–50.207 Scope of procedures.

In the written appeal or in other papers submitted to the Board or in any event at least 20 days prior to the time of the hearing, the contractor shall specify the portions of the findings of the contracting officer from which the appeal is taken and the reasons why the findings or the decision are deemed erroneous. If the contractor relies on facts and circumstances which are not covered by the findings of the contracting officer, such matter must be affirmatively set forth as a part of the contractor's submissions to the Board required by the preceding sentence. Independent findings of fact will be made by the Board although the findings of fact of the contracting officer may be adopted by the Board in whole or in part.

§ 4–50.208 Absence of parties.

In the event of the unexcused absence of a party at the time and place set for a hearing, the hearing will proceed and the appeal will be deemed as having been submitted without oral testimony or argument on behalf of that party.

§ 4–50.209 Pre-hearing arrangements.

The Board may direct the parties to appear at a specified time and place for a conference to consider or otherwise provide for the following:

(a) Simplification of issues,

(b) Possibility of obtaining stipulations or admissions of fact and of documents, and

(c) Such other matters as may add to the disposition of the appeal.

§ 4–50.210 Conduct of hearings.

The hearings before the Board will be informal, with no fixed form of procedure. Findings of fact in the contracting officer's decision which are not controverted may be accepted by the Board without further proof. Although the Board is entitled to the entire record to aid it in the consideration of the case, on facts in dispute the Board may not rely on any evidence not presented in the hearings to support any findings or determinations thereon except that which may be officially noticed. Either the contractor or the representatives of the Government may introduce evidence pertinent to the basic issues. The burden of establishing errors or omissions in the decision of the contracting officer shall rest on the party asserting the error or omission. Subject to the exercise of a reasonable discretion under all the circumstances of the particular case, the Board may limit or otherwise control the issues to be considered on the appeal and the extent of the evidence, testimony or argument presented. A verbatim re-

porting and transcription of the testimony shall be made, the costs thereof to be borne by the agency involved in the contract dispute. In addition, the following general rules will apply:

(a) The parties may be represented at a hearing by any authorized person meeting the requirements of 7 CFR 1.26 (1 AR 441).

(b) The parties may present to the Board a signed stipulation setting forth any agreed facts or stating the matters in dispute.

(c) In addition to the presentation of witnesses and documentary evidence, the parties may, in the discretion of the Board and upon application in advance of the hearing and with notice to the opposing party, submit evidence by deposition based upon oral examination or written interrogatories or in such other form as the Board may approve.

(d) Witnesses before the Board may be required to testify under oath, and attention of the witnesses may be invited to 18 U.S.C. 287 and 1001, and any other appropriate provisions of law imposing penalties for knowlingly making false statements or representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(e) All witnesses shall be subject to cross-examination, and also to examination by the Board.

(f) On proof of authenticity, copies of papers, books, records, or documents will be accepted as evidence in lieu of the submission of the original documents where such submission is not practicable.

(g) The weight to be given evidence presented in any particular form will be determined by the Board in the exercise of a reasonable discretion under the circumstances of the particular case.

(h) Briefs may be submitted, either on request of the parties or the Board, in accordance with instructions issued by the Board, which shall require that copies be served upon the opposing parties who shall have opportunity to present argument in rebuttal within a time limitation fixed by the Board.

§ 4–50.211 Findings and decision of the Board.

The Board will make specific findings of fact and conclusions disposing of the appeal. The chairman of the Board shall be responsible for the preparation and submission of the decision of the Board, which shall be signed by all members of the Board who concur therein. A copy of the findings, conclusions and decision shall be submitted to the contracting agency, to the appellant and to the Director of Plant and Operations.

§ 4–50.212 Finality of decision.

The decision of the Board based upon the appeal record shall be final and conclusive and binding on the parties thereto, except as it may be subject to review as provided by law. A request for reconsideration may be made to the Board within 30 days from the date of the decision. Reconsideration of a decision, which may include a hearing or rehearing, may be granted or denied in the discretion of the Board.

[F.R. Doc. 64–9955; Filed, Oct. 15, 1964; 8:45 a.m.]